

1884-018  
Lee Co.

Chancery Causes: James W. Orr vs. William L. Turner + wife &c  
Charles L. Hamblen vs. James W. Orr

Folder 1 of 4

Hamblin, Miles, Duncan, Bonham, Stewart, Edwards, Fleenor,  
Wynn, Vanhuss, Smith, Cravell, Osborne, Hall, Rutherford,  
Trent, Good, Talley, Woodward, Burnett, Wygal, Martin,  
Richmond, Stickley, Pennington, Gibson, Thomas,  
Surgener, Browning, Vandeventer, Blakenmore, Elliott,  
Williams, Milbourn, Russell, Mursey, Burgan, Bell,  
Wood, Cook, Ely, McClure

CA-Contract Dispute  
T-Property  
Business

-Deed  
-Correspondence

Additional Information:  
Gristmill



To the Honorable John A. Kelly Judge of the  
Circuit Court of Lee County Virginia.

Humbly complaining your Orator  
James W. Orr, would respectfully represent  
and show your Honor, that on the 10<sup>th</sup> day of  
December 1868 he purchased by deed from one  
William L. Turner a certain tract or parcel of  
land situate, lying and being in Lee County  
Virginia about 1 1/2 miles west of Jonesville,  
and known as the "Wynn Mill property". At the  
time of said purchase there was <sup>an said dam</sup> an old mill,  
very much out of repair, and of little, if any, value,  
but the site for a mill was a very fine one.

~~D~~ The intention of your Orator at the time he  
made said purchase was to erect a fine mill  
on said property, and this intention has, since  
that time, and at great expense, been carried  
into execution. A short time after the purchase  
of said property by your Orator, and the Convey-  
ance to him by said Turner, the said Turner  
~~his son~~ came to him and proposed to your  
Orator to purchase a one fourth interest in said  
property, to last during the life of him the said  
Turner and his wife Phoebe Turner, or the sur-  
vivor of them, and at the time of making said  
proposal, he the said Turner represented to your  
Orator that he had no money, but that he had  
a large sum of money then due and owing to him



by parties living in the State of Tennessee, which  
funds could be readily realized by him. And  
upon said representations, your orator, who was  
then hard pressed for money to be used in paying  
the purchase money then still due from his  
Vendor Turner to the parties from whom he had  
purchased said lands, and for funds to be used  
in rebuilding said mill, agreed, in consideration  
of the sum of five hundred dollars, to convey  
to the said Wm L Turner for his life and the life  
of his wife, or the survivor of them, a one fourth  
X interest in said property, mill &c. All of which  
fully appears by reference to said deed, or pretend-  
ed deed dated on the 12th day of December 1868,  
a copy of which is here filed <sup>as per hereoff</sup> marked "A". This  
paper your orator then and there delivered to  
the said Turner, but with the distinct and positive  
agreement upon the part of the said Turner  
that he would proceed at once to collect the  
money which he claimed was due him from  
parties in Tennessee, and pay your orator the  
sum of \$500<sup>00</sup>, the Consideration mentioned in  
said deed, and this the said Turner has failed  
and still fails to do. And your orator alleges  
that, <sup>al</sup> though said pretended deed recites in its face  
that the Consideration, the \$500<sup>00</sup>, has been paid,  
that in fact and in truth not one cent of it has  
ever been paid, but that the whole and every part



At a particular time now in the mind of your orator, about the day of September 1882 while we were standing above the page of the said will there a certain cedar tree talking this matter over, said Turner then and there proposed and agreed to sign any paper your orator would set up annulling said deed, and your orator replied that there was no use in having two papers attesting one to the same matter, and requested said Turner to continue his march for said deed that the same might be returned to your orator, which the said Turner then and there agreed to do.

of it is still due your orator. Your orator will now further show your Honor, that the subject of the said Turner's failure to pay your orator was a matter of frequent talk between your orator and the said Turner, that the said Turner frequently and always, when the subject was spoken of, admitted his said failure and begged your orator not to press but to help him in his old age, and this your orator has done even at loss to himself, and this was done willingly by your orator because he the said Turner was a Minister of the Gospel, and his wife a near relative of your orator. Your orator will now further show and represent to your Honor that he has for years regarded that the said Turner had abandoned his purchase, that the said Turner has not for years set up any claim to said property, that for the last four or five years the said Turner has occupied said property as the tenant of your orator, and as such tenant has regularly paid rent to your orator, never at anytime setting up a claim to any interest in said property. And your orator further alleges that said Turner has often during the time that he has so occupied said property represented and claimed that said pretended deed was lost and could not be found. In this condition matters rested, until a few days ago it becoming necessary to the interest of your orator, to get another



mill, and to remove said Turner from said mill, and of this fact your orator informed the said Turner, who readily agreed to give up said mill, but complained that he was old and poor and appealed to your <sup>orator</sup> to help him, but in no way, even at that time, set up any claim to said property, and at that time your orator called on him for said deed or writing, but he said it was lost, but a few days thereafter, said Turner acting under advice of some one, and with the intent of defrauding your orator out of a part of said property, or in order to force your orator to give him something, brought said pretended deed to the Clerk's office and had it recorded, although said pretended deed was never acknowledged or proved, and although on the evening after it was so brought for recordation, the said Turner again told your orator it was lost and could not be found. Your orator here again represents to your Honor that he had for years regarded said trade as rescinded, that both he and the said Turner had both in all practical ways regarded it as abandoned, that he had not for years called upon Turner for payment, nor had the said Turner set up <sup>any claim to,</sup> or in any way claimed said property, or any interest in it, or growing out of it except as a renter, as aforesaid.

Your orator will now show your Honor, that said Turner,



has been from the inception of the matter actuated alone by an intent to defraud, because he has done nothing but misrepresent & deceive all the way through, and feeling and knowing that he had never paid your orator one cent on said purchase price of said property, and knowing that if he undertook himself to enforce it, that he could not do so until he had paid the sum which he had agreed to pay for the interest conveyed to him, but still intent on his purpose to defraud, he has colluded and conspired with one Charles L Hamilton to defraud your orator. To do which he on the 18th day of September 1882, as appears from a deed, a copy of which is here filed as part hereof marked "B," conveyed said interest to the said Charles L Hamilton, for the alleged consideration of \$500<sup>00</sup>. This conveyance your orator alleges is not bona fide, and is not for a valuable consideration, but was made alone for the purposes of assisting the payment of said \$500<sup>00</sup> <sup>to your orator</sup>, and at the same time to set up, and if possible, enforce his claim for a one fourth interest in said property, and thus defraud and injure your orator. Your orator here again alleges, that said deed was made by the said Turner and wife to defraud your orator, that it was accepted by the said Hamilton alone for the purpose of defrauding your orator, that the said Hamilton



has not paid, and is not to pay, the said Turner  
& wife one cent for said property, unless he recover  
it from your orator. That the said Hamblen had  
full and actual notice that said Turner had no  
interest in said property, either in law or equity.  
Your orator will now further show your Honor  
that on the 21st day of September 1882, he posted  
notices on the Court house door of Lee County,  
and on said Mill, notifying all persons not to  
buy, purchase or in any way trade for the interest  
in said property claimed by said Turner, that  
he gave personal notice to said Hamblen at the  
time he posted said notices, that said Hamblen  
then asserted no claim to it, but upon the contrary  
advised your orator to compromise with said  
Turner, and yet on the morning of the 22nd of  
Sept 1882, he took the pretended deed last mentioned  
to the Clerk's office and had it recorded, said  
pretended deed bearing date on the 18th day of  
September, as aforesaid. And your orator alleges  
that if said deed was acknowledged <sup>on the 18th Sept</sup> and dated  
on the 18th as it appears it was, that it was not  
delivered to said Hamblen until the 22nd of  
Sept 1882, or at least until after the notice, as  
aforesaid, was given him by your orator.  
In tender consideration whereof and for as-  
much as your orator is remediless in the premis-  
es, save by the aid of a Court of equity, where



matters of this kind are alone cognizable, your orator prays that the said Wm L Turner & Phoebe Turner his wife and Charles L Hamblen be made parties defendants to this bill, and each required to answer the same on oath as fully and particularly as if the allegations herein were here again repeated, and each of them thereto specially interrogated, that the pretended deed from your orator to the said Wm L Turner and wife be declared null and void and of none effect; that the deed from Wm L Turner & wife to Charles L Hamblen be also declared void and null so far as it in any way effects the rights of your orator. And if your Honor should be of opinion that the relief already herein prayed for can not be granted your orator then he prays that the said contract between your orator and Wm L Turner may be specially performed and carried into execution by the said Wm L Turner, Your orator then offering to perform the same on his part; and that the said Wm L Turner be compelled to pay your orator the amount of purchase money of said land and mill property, with interest on the same from the date of the Contract; that proper process may issue, and that your orator may have such other further and general relief as the nature of his case may require, or to equity shall seem meet. And your orator will ever pray &c.

Duncan, Wm A Orr & Richmond.  
for Plff.



Defts cost, H. Learnt + 1/2 \$15.35  
 Court fees 14.50  
 witnesses 2.50  
 Sheriff 4.80  
 \$37.15

James W Orr  
 vs Bill in Chy.  
 Wm L. Lerner et als.

Defts cost, H. Learnt + 1/2 \$20.40  
 Writ - - - 7.50  
 Sheriff 2.60  
 1/2 15.00  
 \$45.50  
 Leo le. 2.00  
 \$47.50

1882. Octo. Rules Bill filed.  
 " " Spd Exec & D. N.  
 " Nov. 11th of W. L.  
 " Dec. 1st of Phobe, L.  
 " Jan. 1st of L. L. Hams.  
 " Filed & cont'd.  
 " Decr. Cont'd.  
 1883. Jan. Feby, cont'd.  
 March Cause set for hear-  
 ing by Plaintiff  
 " March Term Decree & sub.  
 " Aug. Decree & cont'd.  
 " Nov. Decree & cont'd.  
 1884. Mr. Decree & cont'd.  
 " Aug. Decree final



1

To the Hon. John A. Keely Judge of  
the Circuit Court of Lee County Va

The Cross bill of Charles S.  
Hamblin, a defendant in the Chan-  
cery Cause of James W. Orr against  
him and others, now pending in this  
Hon. Court. Your Complainant would  
state, that on the 12<sup>th</sup> day of December  
1868, the plff James W. Orr, made a  
deed to Complainant, Co-defendant,  
Wm. L. Turner & Ohebe Turner his wife,  
whereby he granted to them for the  
period of their lives and that of the  
longest liver, the  $\frac{1}{4}$  part of a certain  
mill lot, and  $\frac{1}{4}$  the tolls of said mill  
and the exclusive use of a small  
dwelling house. All known as the Hym  
Mill property. The contract for the use  
and occupation, tolls and rents and  
indeed the whole Contract is fully set-  
out in said deed a copy of which is  
now on file in the papers of the cause  
to which reference is here made, as part  
hereof. On the 18<sup>th</sup> day of September 1882  
the said Wm L. Turner and Ohebe his  
wife sold and conveyed by deed  
all and singular their interest in  
and to said Mill, lot, tolls and rents.



a. Copy of this deed is also among  
the files of the papers of this cause, and  
which is here referred to as part of  
his bill. A very small part, perhaps  
about one year's tolls has been paid  
said Wm L. Turner's wife and the re-  
minder is now wholly due and  
owing to your Complainant. Your  
Complainant charges that the tolls of  
the mill amount annually to about the  
sum of \$700. or \$800 and that your Com-  
plainant is entitled to  $\frac{1}{4}$  the gross earnings  
and that said Orr by the terms of his  
Contract is bound to pay out of his  
part - the expense of running the mill -  
that is - the Contract is made and its  
true interpretation is that Orr pay to  
Turner's wife  $\frac{1}{4}$  the tolls earned by the  
mill - No Complaint is here made as  
to the dwelling house and lot attached  
thereto, that is now and for several years  
past, has been in the possession of your  
Orator's vendor; the deed from Orr to Turner  
and from Turner's wife to your Orator have  
each been duly recorded and constitute as  
your Orator is advised a lien upon said  
property - The tolls of the mill have  
heretofore been much greater than than



at the present time, and your orator has no means of stating their exact value, the only information he has upon that subject is in the proofs of the original Cause.

Your orator is advised that a sufficiency therein appears to entitle him to the intervention of a receiver to take hold and manage said mill & tolls and give a true and accurate account thereof during this controversy.

By a reference, to an ester deed on file with said Cause it will be seen that this same mill & premises had been conveyed to James W. Orr by Wm S. Turner on the 10<sup>th</sup> day of December 1868, two days before James W. Orr conveyed the life estate to Turner's wife. Neither is acknowledged but each are witnessed by the same men your orator chokes that although these two deeds bear these different dates that they were in fact made at one and the same time, were one and the same Contract, and that they were witnessed and delivered at the same time and therefore to be read and considered as contemporaneous instruments, which in legal effect would make Turner's wife's deed a mere reservation of Tolls and the life



life estate. The object of this bill  
therefore is to have an account of the  
rents and profits of said mill for  
the time that has passed, about as your  
orator is informed and charges, a period of  
12 or 13 years at least from the fall of  
1871. And to have a decree compelling  
the payment thereof to your orator; and  
to have a receiver appointed to take and  
hold said mill for and during this  
controversy, and keep a full and accurate  
account of its rents and profits thereof.

His prayer therefore is that James W. Orr  
be made a party hereto, and be required  
to answer this bill fully upon his oath  
and upon a hearing a decree be ren-  
dered, directing the payment of its back  
tolls due on said mill to your orator;  
that a receiver be appointed to take  
charge thereof; and for all other just  
and general relief may Supra issue.

H. J. Morgan & A. L. Pickens



M. S.

C. L. Hainblin

23 crops - 1883

James W. Orr

1883. Bill filed 4  
Leane to answer

1884

65

78

78

78



To the Hon. John A. Kelly Judge of the Circuit Court of Lee County Va  
 The demurrer and separate answer of  
 Wm L. Turner, to a bill filed in this  
 Hon. Court, by James W. Orr, against this  
 respondent and others.

Respondent says the plffs bill is not  
 sufficient in law and of this he prays  
 judgement of the Court &c.

But if any other or further answer be  
 required of him answering he says - It  
 is not true as alleged by the plaintiff,  
 that "after" the plff had purchased the mill  
 property from respondent, that respondent  
 "sought to purchase it back &c". There was  
 but one contract made at one and the same  
 time. The deed executed by this respondent  
 to the plff, conveying the mill, property dated  
 Dec. 10<sup>th</sup>, 1868, was made upon the express  
 contract and agreement, that the plff would,  
 as he did, on the 12<sup>th</sup> day of Dec. 1868, two days  
 after, convey to this respondent, and his wife  
 Phebe, for and during their natural lives  
 or the survivor of them, one fourth of said  
 lot, and one fourth the tolls of said mill; and  
 the exclusive use for the same period, of a  
 small lot and dwellinghouse near-by. This  
 contract is clearly and truthfully set forth



(2)  
by copies of these deeds, filed herewith as part  
herof. The one recites, the consideration of  
\$2000. paid in hand to respondent; the other the con-  
sideration of \$500. paid in hand to the plff.  
In truth and in fact no money passed or  
was to pass as between plff and respondent.  
It was but one contract, and the rights and  
benefits conveyed in one deed was the true  
consideration for the execution of the other and  
the nominal sums mentioned was only the  
estimated monetary value that each received.  
The property conveyed by the respondent being  
valued at \$2000; and the life estate being  
then estimated at \$500. By an inspection of  
the plffs exhibits, and the deed of Alex Hymn  
alias Hurst, a copy of which is also filed herewith  
as part herof marked "X" it will be fully  
shown, that respondent and the said Alex was  
at one time the joint owners of the mill  
property; that afterwards Mrs Hymn decided her  
half to respondent, and he thus became the sole  
owner. Before respondent so purchased from  
Mrs Hymn he became uneasy as to their ability  
to meet their obligations for the original  
purchase, which was \$1000; and of this sum  
respondent and Mrs Hymn had paid only  
\$300 or thereabouts. As before hinted the  
property was regarded as worth \$2000. and



(3)

respondent was anxious to realize its full value, and save what he had already paid so he set out to sell for the best price he could and, intending to retain as far as he could an interest in the property, After various efforts, he at length, offered it to the plff, who refused to purchase a moiety, and became a joint owner with Mrs. Hym, but proposed if respondent, would purchase Mrs Hymns interest, which it was thought he could do on more favorable terms than any one else; that the plff would furnish the money to pay her, and would then assume, the payment of the outstanding original purchase money due from respondent and Mrs Hymn, and that such sums as respondent had already paid the plff was to have, and actually got the benefit of. Respondent did so purchase, from Mrs Hymn upon the condition contained in the deed, & conveyed the same to the plff upon the same conditions, to which reference is here made, and the conditions therein contained are much of the same nature now claimed by the plff to exist between respondent & the plff. - It would be strange if such condition did exist, that the plff, a careful prudent business man, would allow an old woman to so far outstrip him in sagacity, & business capacity.



(4)  
especially when he had her example before  
him. Such was not contract, but for the ad-  
vance on his contract, and great bargain in  
the property, the plff as by his deed shown  
agreed to and did convey the life estate, and  
\$500. was ~~agreed~~<sup>3</sup> agreed to be paid by this respondent  
therefor, nor was any price other than the  
payments already made by respondent & the  
advance on his contract ever to be paid. And  
this respondent solemnly avers that he never in  
all these long years and close intimacy with  
the plff ever heard him claim the same until  
the filing of his bill. At the time of the sale to  
the plff, the plff was not then a man of large  
means, but was prosperous and rising but to  
pay for the property and build the mill, would  
tax his financial ability to the utmost, and he  
would have to borrow money for present  
demands, respondent was anxious to aid  
him because his interest suggested the success  
of the enterprise, and the sooner the mill was  
completed the better for all concerned. With  
that view he told the plff if respondent could  
collect some debts due him in the state of  
Tenn. he would let the plff use it, but no  
amount was fixed, and the promise was made  
under the condition that he could collect, he  
did not, nor could not collect the debts



and hence could not furnish it to the plff. never was it intended to give this to the plff or pay it as a purchase, it was because the debts were rendered doubtful of collection that respondent had to sell, the plff knew the fact that respondent had been a rebel in the late war, that the state government ~~was~~ of Tenn was very hostile to that class of its citizens, he knew it was because of that that respondent had to sell his valuable bargain and still clinging to the hope of collecting this money promised it to the plff, but only to accommodate him by way of a loan - the letter of the plff to this respondent, containing this matter, which will in due time be filed will fully sustain this respondent in this view of the case. This use of respondent's money was no part of the contract, no parcel of the consideration of either deed. Respondent, cannot understand if the contract was for the after payment of \$500. to the plff, why the plff did not so state in the deed, or have a note or bond executed for it, or retain some written evidence showing the fact. The truth is and the plff well knew it at the time; and must know it now, if his interest and supposed advantage has not effaced his recollection, or warped his judgement, that he was fully paid as



(6)  
x as herein before stated, in the bargain furnished him and money advanced by respondent on the original contract, to convey said life estate, - The two deeds without one word of explanation fixes the contract and all the contract there was.

But whether now regarded a bargain or not it was the contract and respondent is advised the plff is estopped to deny his own deed. Respondent reads with surprise and regret, the plffs complaint at the deed not being recorded, when it was a mutual agreement, based on terms of the most intimate friendship and mutual personal regard that it should not be so recorded; Respondent felt for these passing 12 or 14 years as secure in the plffs promise of performance as <sup>he</sup> could have done in his deed, And see too how long before the plff recorded his deed, though executed on the 10th day of Dec. 1868, was not recorded until, the 30 day of June 1871, and let him then answer the cause of his delay. For the 12 or 14 years that elapsed from the execution of said deeds down to about 3 weeks before institution of the plffs suit, respondent was a traveling preacher for about 5 years of the time, for nearly a year was a partner of the plffs in the mercantile business, and for about



three years <sup>or four</sup> occupied said mill as miller  
 and much of the residue has resided in the  
 immediate vicinity of the plff. The plff is cer-  
 tainly mistaken when he says respondent ever  
 paid any rents for the use & occupancy of  
 said property, he now resides and for several  
 years <sup>has</sup> with him on that embow in said deed  
 an no rent for that or pretence that it was  
 not the ~~plff~~ respondent was ever made, the  
 plff received his part of the tolls, and respond-  
 ent only kept such as was due him as miller  
 while he occupied the mill, but before he went  
 there the plff gave him an order to his miller  
 for whatever respondent required for his and  
 his wife's support and under this order he  
 did collect of his tolls possibly as much as  
 one year's receipt of his part. Respondent has  
 no children, or near relatives, as heir at law  
 and for the years herein referred to, preferred  
 the plff to anyone else having whatever of  
 worldly goods with which he might be possessed  
 and so after told the plff he did not want  
 to be hard with him but so long as he  
 could make out to live, would be as  
 liberal as possible, but respondent has  
 had the misfortune or fault of most life-  
 tenants, - He has lived too long. And the  
 plff could not remain patient.



(8)

when this Contract was made, respondent was nearly 60 years of age; and some prospect of realizing something from his property in Lema and the plff may have thought he never would have to perform, his Contract, if he has been deceived in <sup>these</sup> paper, he <sup>has</sup> no one to complain of but himself, respondent never so promised - Respondent always ever having any conversation, releasing, forsaking or giving to the plff his vested rights under his deed.

Not long since, when the plff, came to respondent, and said he wanted to see the Contract - between ~~them~~ <sup>us</sup> that he feared it contained some expression, which would give Mrs Turner heris at law some claim after her death, respondent told him he feared the paper was lost, but so far as he could he would sign any paper to prevent that, that it was only a life estate as he respondent remembered it, and then respondent said though it should be lost, I hope you will take no advantage of that as we both know what the Contract was, and he brought plff in several conversations to know what he would do if the paper was lost, and on renewed and repeated searches he still failed to find the paper and finally <sup>s</sup> to the plff he believed to be



(9)

last; it was then for the first time since the execution of said deeds that the plff, appeared cool & indifferent, and on being pressed by respondent, to answer what he would do for him if the paper could not be found the plff answered nothing that he would do nothing until the paper would be produced. Respondent confesses with regret that he then and there lost confidence in the good intentions of the plff towards him that the loss of his deed and the plff's action cast a gloom over him, for it lost all his hopes for support in his declining years were gone, and he was driven to the conviction that the man above all others whom he had loved, served and trusted, had deceived him, or at least had been tempted by, the prospect of a release from the burden of paying a large but honest debt; to deny his solemn obligation, and refuse a payment so just and long deferred. Under this load of grief he for the first time mentioned to respondent's wife, his fears & feelings, when he was surprised to learn that she had taken said paper from the "pocket case" where respondent put it and where he usually kept such papers had placed it in her trunk in a pocket book, among her



(10)  
wearing apparel, where it had not been  
seen or read by respondent for several  
years - nor did he deem it worth while  
for all that time he would have trusted  
the plffs word as his bond - and if all  
his friends had told him the plff would  
thus have acted until he did so it would  
have fallen on listless ears. When found  
respondent determined to have it recorded  
and did so upon advice with his wife's  
relation Mr. C. L. Hamblin, and on the same  
day he and the plff rode from town to-  
gether, and the plff again refused to do  
anything, but the plff is mistaken when he  
asserts that respondent <sup>said to</sup> had not found the  
paper, plff asked if he had found it  
respondent replied, I told you, in our  
last conversation I had not found it or  
I would have shown it to you - but  
did not say it is not now found - It  
was then recorded, respondent did this  
to see if the plff was firm in his re-  
solve not to aid him unless the paper  
could be found - Respondent is advised  
he was not legally or morally bound  
to show said paper, nor did he then be-  
lieve that it was to his interest, to do so  
and hence refused. After recordation of the



(11)

paper, and conference with other friends, your respondent felt that at his age & in  
a needy condition, would prevent him  
from awaiting the termination of tedious  
litigation for the recovery of his rights, and  
positively he never had heard of any reason  
why the plff would not pay the demand  
except the loss of the deed, He knew & so  
said to C. L. Hamblin, that it was just  
and due him, He knew he was not bound  
to pay anything further and so told Mr  
Hamblin, and under these circumstances  
and being entirely destitute of support  
outside of that claim, he in good faith  
with no fraud or fraudulent intent, or  
design or desire to injure the plff sold and  
transferred all his entire interest therein to  
said Hamblin, who has partly paid him  
therefor and promises & is bound to pay  
the residue according to contract. This trade  
was made and consummated some two or  
three days before the deed to Hamblin bears  
date and was reduced to writing but  
some changes were afterwards suggested &  
the deed of 18<sup>th</sup> Sept drawn to meet the  
contract fully as it was made.

Respondent therefore, deny ever by word  
act or deed, releasing or relinquishing his



(12)  
rights, remedies, tolls or any other legal  
claim under or by virtue of said deed - He  
denys any fraud fraudulent intent or  
knowledge of fraud in C.L. Hamblin or  
any one else in connection with said sale  
and transfer - He would further state that after  
the deed was recorded, and after the sale to  
Hamblin, Hamblin's Counsel approach said On  
the plff for a settlement, friendly and satis-  
factorily if possible, and respondent believe  
this circumstance, advised the plff of an  
intention upon the part of said Hamblin  
to enter suit for the enforcement of the  
demand, the plff then supposing a "running  
go" would aid his flimsy cause files his  
bill and cries fraud! fraud!! bad  
faith & deception! Contract for 14 years has  
just been discovered by the plff, when he  
saw an earnest to call him to account.

Respondent will await the evidence  
in this cause, and see the facts presented  
and let them answer where the fraud  
bad faith and deceit is. He denys ever  
having released abandoned or given up his  
contract or ever said one word or did  
a single act calculated to so misrep the  
plff. And it would be strange if the frequent  
conversations took place which plff



allego did take place, of and concerning this matter that he is wholly unable to repeat any word so detailed. It was not the plff that stirred this matter up, and in one breath he tell us that this respondent ~~desired~~ <sup>desired</sup> him ~~in~~ <sup>in</sup> ~~superintendence~~ <sup>superintendence</sup> to do something for him, and in the next breath say he regarded the Contract as abandoned - respondent avers that never at any time did he beg alms of the plff or ask him to do or give him, respondent, anything more and except that which the plff justly owed and was long over due. But as before related when the paper was supposed to be lost, respondent appealed to the plff's honor and fair dealing not to take advantage of that Circumstance, but the plff turned a deaf ear, and grew arrogant and dictatorial over the supposed misfortune of the respondent. Respondent denies that ever the plff did anything for him, not repaid and doubly repaid, by a devotion to the personal & political welfare of the plff and a constant and faithful service <sup>in</sup> ~~in~~ <sup>in</sup> his power for ten years past. And the plff ought <sup>to</sup> ~~to~~ now to allude to things done cheerfully during the hours of, happy days and years long gone by.



(14)  
Respondent has thus fully answered the  
plffs bill, according to the facts and  
evidence of these facts all fully cognizant  
to the plff. But respondent, may have  
over Confided, in the plff; his delay may be  
his ruin; and the plff may, being an attorney  
and shrewd business man, have thus gained  
advantage over him; if so, be it so. That  
will not nor does not alter the truth -  
It stands unchanged, and respondent  
still believes in its ultimate triumph.

If he is mistaken in the law  
resulting from these facts, and should therefore  
fail in the recovery of his just claims,  
then he is advised he must accept the  
Contract as claimed and urged by the  
plff. That as the plff claims the five  
hundred dollars as a consideration; and if  
he shows that to the satisfaction of the  
Court, notwithstanding its utter falsi-  
ty, and great wrong upon respondent, still  
as no time was agreed upon by the  
parties within which said five hundred  
dollars was to be paid, and as the plff  
still claims and demands it as due to  
him, then a Court of Chancery in that  
event would direct an account of the  
rents and profits of said mill, and



(15)

and after deducting from the said five hundred dollars the purchase money paid by respondent and Mrs Hymn and which the plff got the benefit of so much of said rents as would discharge the same would be applied to said sum, and the residue if any with the future rents and profits be directed to be paid over to this respondent's assignee. Respondent alleges that the rents and profits of said mill will greatly over pay the same by the application of respondent's one fourth thereof. And should the plff succeed in establishing such false & unjust demand then he asks an account of the rents and profits of said mill, and account and settlement of the same.

Respondent is further advised that as the plff claims the consideration of the mill lot to be \$2000 so much of that price as he has not paid is still due respondent, and this respondent alleges that the plff has paid in money only to Mrs Hymn and the original vendors, and nothing to respondent about \$200 of that sum, which was the price agreed upon, and that the other \$1800 is still due him, should he be held liable for the consideration set forth in the plff's deed, and he here calls on the plff to show when how & to whom he paid







To the Hon. John A. Kelly Judge of the  
Circuit Court of Lee County Va.

The demurer and answer of Ohebe  
Turner, to bill filed in this Hon. Court  
against this respondent and others by James  
W. Orr.

Respondent not waiving her  
said demurer, but relying and ~~insisting~~  
on the same for further answer says.

She does not personally know of many  
of the facts stated in the plffs bill, but she  
has heard ... her husband's H. M. L. Turner an-  
swer to this bill carefully read & adopts the same  
as her own, in answer to the plffs bill, be-  
lieving it to be true. Respondent knows  
that the deed of 12<sup>th</sup> of Dec. 1868, conveying a  
life estate in said mill lot, and out lot &  
dwelling house, was executed by said Orr  
and delivered to her husband, that at that  
time, as now she was a married woman,  
and on hearing the deed read, she felt  
grateful to her husband for sharing fully  
his benefits derived thereunder with respondent  
and she never at any time heard that her  
husband had anything further to pay, but  
always at that time, and all subsequent  
times, understood and believed that the con-  
sideration of said deed was the part



due to her husband, on his bargain over and above what the plff would have to pay Mrs Hymn and the vendors of Mrs Hymn and her said husband - and never until the institution of the plffs suit did respondent learn that the plff claimed the payment of any money thereunder. She is advised that, as said deed purported on its face, be fully paid and satisfied and that the plff, conveyed his property to her, without any conditions whatever, <sup>or previous</sup> or notice of an outstanding claim for purchase money that she is an innocent purchaser, in law without knowledge of the plffs supposed claim for purchase money, and that her rights cannot be affected by any subsequent, promise or agreement of her said husband to pay or furnish sums of money. She was no party to such a contract, nor does she believe there ever was such an one, but if so it can not as she is advised affect her or her assignee.

Without ~~out~~ any knowledge of such a claim upon the part of the plff, or any reason to believe that such was the case, she joined in a conveyance of her interest thereunder to C. L. Hamblin, not through any fraud or fraudulent intent, but through the



force of necessity, rendered imperative by the plaintiff's absolute refusal to pay anything to respondent and her husband. Respondent thought she saw several years ago, an over confidence in her husband towards the plaintiff, and as she was growing old, and less able to work she thought proper to keep a careful eye over said deed, and so she took it out of its "pocket case" where it had been placed, filed it in a pocket book among her own wearing apparel, where it has remained in her care for several years past; and its control has been watched over by her, without the knowledge of where it was by her husband, so far as she knows. Indeed nothing has been said about it until recently her husband expressed fear of it, and repeated his difference with the plaintiff, when she informed him of its safe keeping. There are all the facts within her personal knowledge except the receipt under the plaintiff's order of some tolls at different times before she & her husband removed to the mill - Her sale with her husband to Hamblin was a fair & honest one, for value partly paid and hereafter to be completed, and she denies any fraud or fraudulent intent - She desires that her assignee may be



allowed the full fruits of his contract for her  
 part; and she is advised the plff, can not  
 claim exemption from his deed to her by  
 reason of any supposed bargain or contract  
 with the husband of respondent, but that  
 independent of her sale to Hamblin she  
 would be regarded in law as an innocent  
 purchaser without notice. On this she relies to  
 protect and shield her vendee, who has  
 used his means to purchase a just and  
 honest claim. And having now fully answered  
 she prays to be dismissed with her costs.  
 A. L. Pridemore

Phoebe Turner

Acts Answerer.

James M. Orr

Filed at New York 1852.

J. W. Pridemore  
Clerk

This day Phoebe Turner personally appeared before me  
 and acknowledged and made oath that the foregoing answer  
 was made by her as made upon her own knowledge and belief  
 as much as upon information derived from others she be-  
 lieves them to be true.

Given under my hand, Oct 30 - 1852

Wm. C. Robinson, Notary Public



(1)

To The Hon. John A. Kelly, Judge of the  
Circuit Court of Lee County.

The separate demurrer and answer of  
Charles L. Hamblin, to a bill filed in this  
Hon. Court against him and others by J. W. Orr.

Respondent says the plffs bill is not  
good and sufficient in law, and of this  
he prays judgement of the Court or.

But if any other or further answer be  
deemed necessary, answering he says,  
That before, the day on which his assignors  
had recorded the deed of the plff, dated Dec.  
12. 1868, respondent had no knowledge  
whatever of the transaction between the plff  
and his co defendant, Mr & Mrs Turner, on  
that day Rev. Wm L. Turner, who is the uncle by  
marriage of respondent came to him and  
showed him said deed, and related the matter  
of difference between him and the plff, to  
this effect - That, for some time, the plff and  
said Turner had regarded said paper as  
lost, and the plff had refused payment  
until the paper could be found; the plff  
contending that he would not pay anything  
in the absence of the paper, and that now  
it had been found, said Turner asked  
advice of respondent what was best to  
be done, respondent advised him to have



(2)  
the deed recorded and then the plff could  
see it without injury to said Turner and  
respondent took the paper over to the  
clerk's office and had it recorded - and  
then his uncle besought him to purchase  
it and furnish him and his old aunt  
something to live upon, He accordingly did  
purchase it, and has partly paid therefor  
by furnishing goods wears & merchandise  
to his assigners as they may need them  
Respondent has bound himself to pay the  
residue, hereafter, and whatever may be  
found due from the plff is justly  
going to this respondent, his assigners  
having no interest whatever therein. This  
respondent, was not informed by his  
assigners or any one else of any such  
claim as the plff sets up; that his assign  
or, was to pay five hundred dollars, the  
consideration mentioned in said deed, our  
<sup>respondent</sup> had ever heard the plff make such  
claim, but he relied upon the fact that  
said deed recited the payment thereof  
and he believed it to be true. He was  
induced by the face of said deed, being  
in the hand write of the plff, and  
knowing his ability to pay, to believe &  
he did believe the demand to be a just



(3)

one. The contract and purchase of said claim, was made a day or two before the deed to respondent bears date, but on that day it was reduced to writing and delivered to respondent, and all the rights remedies and amounts due thereunder, was as respondent is advised passed to and became vested in this respondent. The trade was made, and the deed executed and delivered to this respondent before the plff. posted his notice or gave this respondent any information concerning said claim and he did not state in his notice or verbally to this respondent, that said deed was delivered to said Turner on the secret condition of the after payment of five hundred dollars or any other sum. But seemed to insinuate that said deed was not in some way binding. All this was after respondent's purchase and assignment. The deed to respondent for said property, was executed on the day it bears date, and was the result of a trade consummated a day or two before. The plff says in a conversation had with respondent on the day he gave notice, that respondent did not tell him he had purchased said property, so he did not, nor was he as he is advised bound under any consideration so to do, the trade



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and the rights of parties <sup>were then</sup> fixed: but respondent would have so advised the plff, but for his excited manner, and seeming ill feeling

They had been (the plff & respondent) for several years partners in business as merchants, and all their lives personal friends, and respondent did not want to further irritate the plff or cause ill feeling, so said to him "I hope you & uncle Turner can settle the matter," and if the plff had at that time proposed to do so much as would have been reasonable and right, respondent would have released any contract, upon his part to have affected that laudable object. He then and now, desires the friendship of the plff, and hopes he deserves and enjoys it.

But he can not afford to purchase it, by refusing aid and counsel to his own near relatives, who are poor and distressed and who had as respondent believed and still believes, a just and valid demand against the plff. Respondent immediately upon the purchase of said paper, the deed of the plff to Mrs & Mrs Turner, sought legal advice, with a view to enforce his demand, but before doing so he requested his counsel to confer with the plff and make known his object, this was partly done, but the



(5)

plffs prompt refusal, to entertain propositions of settlement, induced his counsel not to enter into details, but merely suggested that said claim had passed into the hands of other parties, and after this conversation and notice the plff pasted his notice as <sup>often</sup> mentioned in his bill, and instituted this suit, supposing no doubt that this would gain him some advantage. This respondent alleges he is an innocent purchaser without notice of the plffs demand against his assignors for five hundred dollars or any other sum. Respondent can but be amused at the plffs wild and repeated charges of fraud; Fraud in what? if the plff is as innocent in intention to defraud and ruin his assignor as is respondent in act or thought to injure him the plff, then this whole matter could be settled. There is no fraud or fraudulent intention on the part of this respondent, nor has he any knowledge of any such intention, on the part of Wm. L. Turner, or Mrs. Turner, in relation to said assignment. He therefore firmly but respectfully, declares such allegations to be false & unfounded - untrue so far as this respondent is concerned or knows of others. Respondent is advised that as



(6)  
the plff executed his deed jointly to Wm L. Turner & Phebe his wife, that they each took a moiety of the tolls, with the right to the whole to the survivor of them. The plff utterly fails in his bill to show any sufficient reason for not paying the moiety due Mrs. Turner, she never promised to furnish any money or has in conversation or otherwise released or abandoned the same, and no purchase money being due by the face of said deed, and this respondent being a purchaser without notice for value, He is advised, whatever may be the case with Wm L. Turner's moiety that the moiety of Phebe Turner is justly due him; Respondent knows nothing personally of the conversations, and supposed releases, between Wm L. Turner and the plff, but refers to his co-defendants answer, for the facts in relation thereto. But the plff makes no such claim to the interest of Phebe Turner, - Respondent again denies any fraud collusion intention or design to injure or defraud the plff - nor can he see, how the collection of a just demand can defraud him, and respondent regrets that the plff thought it necessary to prefer such grave charges of fraud and collusion, against one, who has as the plff must know endeavored through life



(7)

to acquire property by honest and fair means - Respondent deny, every material allegation affecting his rights in the premises as assignee not herein before specifically admitted or denied, and having now fully answered the ~~pleff~~ bill, he prays an account of its rents and profits of said mill, which plff has no means of ascertaining, what amount he should demand only as informed, and he is advised that the one fourth part due him annually would amount to some 300 or 400 bushels of grain, mostly wheat, nor can he say what each year would be its market value thereof - But all of which has been used or consumed by the plff except as he is advised about one year rent, The amount whatever it is and interest thereon from its time so consumed by the plff would now be due respondent, He therefore prays a reference, of account, of said rents and profits tolls and interest to a commissioner of this Court and a decree over for the residue; and that the future rents tolls be decreed respondent. And having now fully answered he prays to be hence dismissed with his costs.

A. L. Pridmore



Virginia Lee County Court:

This day Charles L. Hamblin personally appeared before me the undersigned and made oath that the foregoing answer is true, so far as made upon his own knowledge; and so far as made upon information derived from others he believes it to be true. Given under my hand this 2<sup>d</sup> day of November 1882.

J. A. Hyatt clk

C. L. Hamblin

Ans<sup>r</sup> Answer

James W. Orr  
Exhibit exhibit to -

Filed at Court, October 1882

J. A. Hyatt  
Clerk



To the Honorable John A. Kelly Judge of the Circuit  
Court of Lee County Virginia

The Demurrer and answer of James H. Orr to  
a Cross bill filed in this Honorable Court against him  
by Charles L. Hamblen.

This respondent is advised that said Cross bill  
is not sufficient in law to call upon him to answer in  
this Honorable Court, but that there is good cause of  
demurrer thereto ~~and~~ ~~that~~ he does accordingly demur  
and prays Judgment &c of his said demurrer.

But should other and further answer be required of  
him answering he says, that it is true that he did  
on the 12<sup>th</sup> day of December 1868 make and execute  
the deed referred to by the Plaintiff, but said deed, as is  
charged and alleged by this respondent in the original  
bill, was made in consideration of \$500<sup>00</sup> The purchase  
price  
agreed to be paid by W<sup>m</sup> L. Turner for the interest convey-  
ed to him and his wife in said Mill property by said deed  
Not one cent of which has ever been paid by the said Turner  
and wife or either of them. Said deed clearly sets out  
the full interest in said property conveyed to the said



Turner and wife, That is "one undivided fourth of said Mill lot or Tract with its appurtenances and one fourth of the tolls of the Mill, also the exclusive use of the house and garden then occupied by them" for their lives or the life of the survivor of them. This lot or Tract of Land contains about 40 acres and is valuable alone as a mill site. At the time of making said deed there stood upon said lot an old mill, badly run down & much worn and of very little value, in fact in its then condition it would do little or no grinding. As the plaintiff contends for a literal construction of said deed, then he ought to be content with one fourth part of the tolls of the mill then standing on said lot and the mill evidently referred to in said deed. Yet he does not seem satisfied with that but claims one fourth of the tolls of the mill afterwards erected on said lot although his vendor never contributed a single cent toward the erection thereof. In the year 1869, respondent by & with the consent of the said Turner and pursuant to his advice repaired said old mill at a cost of \$300. But it was in such condition that after being thus re-



1

paired it did but little good and did not last long, and a new Mill had to be erected. At the time this Mill property was purchased by respondent he was young just beginning business for himself and in addition Thurt had only one arm and was poor and hard run, and it was these facts that induced him to sell to said Turner the interest above named in said property, respondent hoping thereby to get <sup>money</sup> to use in repairing said property and making it valuable, but his calculations in this respect sadly came to naught. After this trade was made respondent and Turner determined to improve said property as far as possible, but being then unable to erect a new mill we determined to repair the old one which we did at a cost of \$300<sup>00</sup> all of which was paid by respondent and not one cent by said Turner. But the mill still proving unsatisfactory and of little value it was soon determined by us to build a new mill. But the enterprise was not carried into execution until the year 1872. and Turner was at that time off preaching and in charge of a circuit. It was the understanding



X  
X  
X  
X  
X  
X  
X  
and agreement between said Turner and respondent  
That these expenses of repairing the old mill and building  
the new one should be borne ratable between us  
in proportion to our respective interests That is respondent  
was to pay or bear threefourths of these expenses and  
and the said Turners the other fourth. And to this end  
the said Turner was to collect as fast as he could the debts  
due him in Tennessee and furnish his proportionable part  
of the money for said undertaking. The old mill proving  
unsatisfactory as above stated, Respondent in the year  
1872, with the full knowledge of said Turner, with his  
consent and at his earnest solicitation and pursuant  
to the above mentioned agreement built the new mill  
and paid for the same with his own money. An account  
of the expenses of repairing the old mill and building  
the new one is here filed as part hereof marked (Q)  
And since said new mill was built, it has been  
all the time kept in repair by respondent and  
that too at great expense an account of which is here  
filed marked (P) all these expenses were and are  
joint expenses to be borne by respondent and



1

+ Turner ratable<sup>as aforesaid</sup> according to interest, but respondent has borne them alone without help or assistance from said Turner, and as stated in the original bill filed by plaintiff the fact of said Turners failure to pay for said property, or to contribute anything towards its improvement were subjects of frequent conversation between him and respondent after his return here about the year 1875. In these conversations the said Turner freely admitted his failure to comply with his part of the undertaking and he set up no claim to said property, no claim to any interest in it, and no claim to any part of the earnings of said mill, And ~~from~~ from the year 1871 to the year 1882 he occupied said Mill as the tenant of respondent paying to respondent all the earnings of said mill after paying himself as Miller. But now strange to say the plaintiff who claims to be the vendor of Turner sets up a claim to 1/4 of the gross earnings of said New Mill from the time of erection down to the present and for the balance of the lives of the said Turner and wife or the ~~or the~~ survivor of them, and at the same time denies his obligation to contribute anything towards said expenses.



Respondent has also at his own expense and at a  
cost of \$                      erected a neat and substantial Mill  
\*                      and other valuable/permanent improvements  
his house, on said lot, an account of which is here  
filed marked (B). Respondent has also paid all the tax  
es on said property amount to \$                      an account of which  
is here filed marked (C). All these expenses, are  
as respondent is advised, a lien upon said Mill  
property, being as they were incurred on partner  
ship property and for the permanent improvement  
things, and he is further advised that all, that is all,  
of Turner's part thereof must be repaid to him before  
the said Turner or his vendor can get anything out  
of the Tolls or earnings of said Mill. Respondent  
is further advised that the Plaintiff even if he is  
an innocent purchaser occupies in relation  
to said property the exact position of his vendor, that  
he holds said interest conveyed to him by said Turner  
& wife subject to all the equities offsets and claims  
of the respondent against said Turner, and that  
therefore before he can claim any of the earnings of  
said Mill he must pay the valuable part of creating



it, and the necessary and permanent improvements made upon it, the repairing and keeping it in order The Tax is the

Respondent denies that there is any part of the back tolls due to Turner and wife, How much they have received respondent is unable to tell, but if they ever received anything by way of tolls he had no knowledge of it, and it was without his assent. He can't say no claim was ever set up. There is nothing due them, because to take it upon the most charitable view that can be extended to them or their vendor, their pro rata part of the expenses heretofore incurred upon said property must all be taken from the <sup>net</sup> tolls earned by said mill before they are entitled to receive anything.

Respondent denies that the gross tolls arising from said mill will amount to either \$700. or \$800 a year, but the exact amount, of said tolls yearly respondent is unable to state never having kept an account, thereof. Respondent denies the interpretation given to the deed of Dec 12 1868, by the plaintiff. Such an interpretation as it appears to respondent is absurd, and contrary to all rules of interpretation and in

about the time of their sale or individual sued to the people



violation  
of the plain simple rules of grammatical construction. The plaintiff's recitals took by said deed, if they took anything, a joint interest, to the extent of their interest, in said property, that is an undivided  $\frac{1}{4}$  of the lot, and of the mill, but they took it subject to all legal charges, and one of those charges was the payment of the Millers wages for attending & running the Mill, Respondent alleges and avers that the contract between him and Turners was that the nett tolls and not the gross tolls of said Mill were to be divided he taking  $\frac{3}{4}$  and they  $\frac{1}{4}$  of said nett tolls, and he is advised that this is the true reasonable and correct interpretation of said deed, there is not one single word or syllable in the whole of said deed binding respondent to pay or by which he undertakes to pay to Turners  $\frac{1}{4}$  of the tolls, but as before stated he simply deels to them an interest in the property, and it would be just as fair to say that Turners



in accepting said deed became bound to pay him  $\frac{3}{4}$  of the gross earnings of the mill, as it is to say that he in making the deed undertook to pay them  $\frac{1}{4}$  thereof. Respondent admits that it is true that said Mill lot and premises were conveyed to him by the said Turner, on the 10<sup>th</sup> day of December 1868 or just 2 days before the deed conveying the afore said interest over to him, but, he positively denies that both the said Trades were one and the same transaction, and he avers that they were what they are shown to be by the deeds separate and distinct transactions having no connection whatever with each other. he positively denies that they were made witnessed or delivered at one and the same time. He denies that the legal effect of said two instruments is a reservation by Turner and wife of a life estate in said property. By a further inspection of said deed of Decr 10<sup>th</sup> 1868 of Turner to respondent it will be observed that he warrants generally the title of the lot or premises conveyed by him, and yet his wife does not join in said conveyance the



has therefore a contingent right of claim in  
said property, and respondent is advised  
that he has a right to retain enough of what  
may still be due to Turner, <sup>either at present or in the future</sup> if anything, to com-  
pensate for said contingency. Respondent denies  
that the Plaintiff is an innocent purchaser of said  
property for valuable consideration and with-  
out notice of respondent's ownership of said  
property. he denies that said Plaintiff had  
paid the consideration mentioned in said  
deed or any part thereof at the time of the  
institution of said original suit, he also de-  
nies that said Plaintiff has paid any mate-  
rial part of said consideration even up to this  
time. But he alleges that the whole of said con-  
sideration even if the trade between himself  
and said Turner was bonafide, was due from  
him to them at the time of the institution of  
said original suit. That much the largest  
part of it is still due them, and as his claim  
for improvements and repairs ~~is~~ a lien



upon said property as against said Turners  
and the plaintiff as their vendor, it would  
also be a lien upon any sum still due to them  
from said plaintiff. Respondent has no  
objection <sup>to</sup> an account of the Tolls and earnings  
of said Mill since its erection, but he insists  
that while this is being done that he is entitled  
to an account of the improvements and  
repairs made upon said property by him.  
He denies the right of the plaintiff to a  
receiver, such a thing is unnecessary ~~since~~  
because respondent is now having and  
has had since he found that said Turners  
set up an interest in said property, a correct  
and exact account kept by his Miller of the  
earnings of said Mill, and for the further  
reason that said property is according to  
the claim of the plaintiff partnership prop-  
erty, held voluntarily by the plaintiff if held  
by him at all, with full knowledge upon  
his part before he bought it that ~~respondent~~  
was controlling it.



and now having answered said bill as fully as  
he deems it material or necessary for him to answer  
the same and requiring full proof of every alle-  
gation not herein confessed he prays to be hence  
dismissed &c.

Richmond Dunsmuir & Orr,

Virginia: Lee Co. to wit:-

for Respondent.

This day, James W. Orr, personally appeared before me  
and made oath in due form, that the facts stated in the foregoing  
answer, so far as they depend upon his own knowledge, are true  
& that so far as they depend upon information as derived from  
others he believes them to be true, this Novr. 30<sup>th</sup> 1883.

J. A. Hystyatt clerk

James W. Orr.  
att. E. Dunsmuir  
C. L. Hambleton.

Filed in open court  
by leave thereof on  
Novr. 30 1883.

J. A. Hystyatt  
clerk



James W. Orr Complainant  
 W<sup>m</sup>. L. Farnes et al Defendants  
 C. L. Hamlin Complainant  
 James W. Orr et al Defendants

} In Chy

These causes came on this day to be heard on the papers heretofore read in the causes, the report of Commissioners Hyatt, with sundry exceptions thereto by complainant, Hamlin & deft. Orr, and were argued by counsel. On consideration <sup>pursuant to a written opinion filed in the cause,</sup> whereof, it is adjudged, ordered and decreed, that the original bill be dismissed, and that the defendants to the original bill recover their <sup>therein expended</sup> costs of the complainant James W. Orr. And it is further adjudged, ordered and decreed that C. L. Hamlin complainant in the cross bill recover of the defendant James W. Orr \$138.55 <sup>12th</sup> ~~34~~, with interest thereon from the ~~15th~~ day of ~~September~~ <sup>found due him by said report</sup> ~~July~~ 1884 till paid, the rents and Tolls, since the 15th. day of ~~July~~ <sup>September</sup> 1882, to the 12<sup>th</sup> day of July 1884. ~~And it is further adjudged ordered and decreed~~ that each party pay one half the costs incurred in the cross bill, and the causes <sup>are</sup> ~~be~~ stricken from the docket.



Over a corner

x

Hamilton's Cove

Over a corner

1/15

For the year 1820

Enter  
for A. K.  
Aug 130/52

2006  
2006



James W. Orr plff

Against

Wm L. Turner et al deft.

} In chy

This cause  
Came on again this day to be heard  
upon the papers formerly read, and  
on motion of the defendants, <sup>by counsel</sup> leave is  
~~granted them~~ to file their Crop-bill, setting  
up their claim to toll, rents, and profits of  
the mill and premises in dispute - on  
consideration whereof the Court - being of  
that opinion leave is granted them or  
either of them to file said Crop-bill  
at rule, hereafter, asserting such claims,  
they may be advised they are entitled to -  
and the cause is continued.



James W. Orr

vs } Decree

Wm L. Turner et al

Aug. 7. 1883

Entered page 345.

J. A. Hyatt  
1883

Enter this  
Sept- 6 1883



James W. Orr v. William L. Turner & wife et al.

The delivery of the deed of 12<sup>th</sup> Decr. 1868 by the grantor to one of the grantees, vested in the grantees the legal title to  $\frac{1}{4}$  of the mill property for the life of the longest liver, and by operation of the 14<sup>th</sup> sec. of Ch. 116 of the Code of 1860, transferred to ~~the~~ them the possession of the grantor as effectually as if they had been seised with livery of seisin. Sec. 4. of same Chapter gives efficacy to even a grant, without livery. But this deed is a simple deed of bargain and sale. If the bill is interpreted to mean that the delivery was conditional, and only to be effectual when the purchase money was paid, the condition is void, because the delivery was to the grantee, the deed was perfect on its face, and acknowledged the payment of the purchase money. *Miller v. Fletcher* 27 Gratt. 403. Especially is it not admissible to annex a contemporaneous parol condition to a perfect deed of conveyance, on its delivery to a grantee by the grantor. *Staples* f. same case p. 415. But the bill itself does not assert that the ~~delivery~~ was conditional. The fair interpretation <sup>of the bill</sup> is that the price of \$500<sup>00</sup> was agreed on. Pursuant thereto, the deed was duly executed, formally acknowledging receipt of purchase money, and was delivered, the grantee promising at once to proceed to collect and pay to the grantor the purchase money. There is no more than happens in every case of sale on time, where the parties, for the purpose of giving effect to the conveyance, under the statute of uses, acknowledge the receipt of purchase money. But the failure to pay according to agreement never has been held to defeat the estate granted. Nor to give the party an equity to have the contract rescinded. The remedy given by the law of this State, since the lien for purchase money has been abolished, is simply an action for the money. Turner and wife then had a simple feehold estate for life of  $\frac{1}{4}$  th of the mill property on the 12th day of December 1868. On the 13th of June 1872, nearly 4 years after the delivery of the deed plaintiff Orr recognizes, in his letter of that date an interest in Turner, in this property. It was manifestly an interest under this deed. So that in June 1872 it may safely be held that Turner & wife owned an estate of feehold in the  $\frac{1}{4}$  th of the mill property here in dispute.



Has any thing occurred since then to defeat that estate? There is no pretence in the bill of any contract between the parties by which the estate has been transferred to the plaintiff; nor is there a statement of ~~the~~ any contract or agreement to reconvey, which the court is called on to execute. It is said that Turner has abandoned his purchase. If this is so, it is not a subject of equity jurisdiction. If he has abandoned it, <sup>absolutely</sup> effectively, there is no need of aid from a court of equity, or of law. If he has not effectually abandoned it, a court of equity will not compel an absolute abandonment, unless upon some such ground as gives the plaintiff a right to relief. At law mere abandonment will not divest a freehold estate: no parole surrender will operate: not even a cancellation of the deed of conveyance. Code of 1860 sec. 1 Ch. 116; Grayson v. Richards 10 Leigh. At law abandonment by one party, and an adversary possession by the other; that is, abandonment by the grantee, and adversary possession by the grantor, long enough continued, will reinvest the grantor with title, just as any adverse possession under claim of right, will ripens into title. (See *mur v. Freeman* 7 S. V. Rep. 430. But equity never interferes where there is a legal remedy, and no special ground for equitable relief. Equity, in a proper case, would enforce a contract to reconvey; but there is no allegation in this bill of any such contract. The bill rests the claim to relief on abandonment, and failure to pay the purchase money. But the purchase money can be collected by action at law; & if there is such an adverse possession by the grantor against the grantee as brings the case within the statute of limitations, any portion of the land held by the grantee now can be recovered in ejectment. Upon this view the demurrer must be sustained. But if this view is not sound, then there is no evidence of the contract, but the answers, the deeds, & the letters. Upon the face of the deeds no purchase money is due. Upon the answers nothing appears to be due. Upon the letters there is no evidence of any purchase money being due; but probably, in a suit in which the question was properly made, a claim for contribution to the building of the mill

might be enforced. The bill is not framed with that view, nor are the facts stated in the bill such as to justify the court in granting that relief. Perhaps the plf. will prefer amending his bill with a view to setting up this claim, and with a view to give him that privilege, a final decree will not now be entered. *Ging and Atcherson v. Nichols* 1 H. & M. 129, is not the case of an executory, but an executory contract.

J. A. Kelly  
July 27-1883

Virginia:

In Vacation of the Circuit Court for Lee County, before J. A. Kelly, Judge thereof  
July 27-1883.

James M. Orr Complainant  
vs.

M. L. Turner et al Defendants

In chy

On consideration of this cause upon bill, answers, replications, agreed facts, exhibits and depositions, for reasons stated in writing and filed in the cause, no decree is now entered, but all questions are reserved for further hearing, and decision at the next term.

To the Clerk of Circuit Court  
for Lee County

J. A. Kelly



James W. Orr  
} Vacated Court  
} Opinion

W. L. Turner et al

Rec'd by mail & filed  
Aug 2<sup>n</sup> 1880, and  
Decree entered on  
Chas O. B. page 324

J. A. Hyatt  
Clerk

Jul 27 '83

1st



James H Orr Plff. 3  
vs 3 In Chy  
Wm L Turner et al Dfts 3

This cause came on this day to be heard upon the bill and exhibits filed, the separate answers & exhibits of defendants with general replication thereto, the agreed statements of facts and depositions of witnesses and having been fully argued by counsel, by agreement and consent of the plaintiff and defendants made and given in open court the cause is submitted to the court to be decided in vacation and the decree certified to the Clerk ~~of~~ for entry.



James M. Orr  
Vice President  
Hon. J. Pierpont

Entered by direc-  
tions of the Court  
on page 316.

April 5<sup>th</sup> 1883.

J. A. Hyatt  
Clerk

Wanted it sent to the office to get the money off at once.  
 wanted Mr. J. H. H. to be sent to the office to get the money off at once.  
 wanted Mr. J. H. H. to be sent to the office to get the money off at once.



C. L. Hamblin Plff } In Chancery  
versus } Iowa Bros  
James W. Orr def } Bills

The deposition of M. C. Miles  
C. T. Duncan & others taken before  
me at my office in the town of Jousville  
on the 30<sup>th</sup> June 1884, <sup>& succeeding days</sup> which are intended to  
be read as evidence in support of Orr's  
account, "in the above styled case."

M. C. Miles a witness of lawful age  
being duly sworn deposes and says -  
Question by Defendant, Orr.

Did you receive from Dixon Smith & Co of  
Bristol a lot of Mill Irons for James W. Orr in  
the year 1872 and haul them to Jousville if  
so who paid you for hauling them and how much  
per 100 lbs.

Answer - I did haul said mill irons from  
Bristol to Jousville for Mr. Orr. I don't  
remember the exact No. lbs - but think it  
was 200 or more pounds. He paid me  
for 100 lbs - for said hauling

Question by Same Do you recollect of getting  
& hauling for Mr. Orr a quantity of finishing  
nails at the same time if so state about how  
many pounds.

Ans. I have some recollection of get-  
ting at the same time for Mr. Orr, a  
lot of finishing nails. I think about  
50 lbs - which I hauled for him. I don't  
recollect whether I paid for them or not.



I was driving a team for Mrs Bonham & this hauling was paid for. to Bonham. Question by Sam Do you recollect doing any work on the new road which was made necessary by the erection of Orr Mill dam, if so who paid you for the same, and if you recollect the amt paid you.

Ans - I worked on said road, but don't recollect the amount paid me for said work - Mr. Orr paid me 75¢ per day for said work I think it would amount to as much as 9 or \$10. -

Mr. H. C. Bonham superintended for Mr. Orr and as road crew, the making of said road, L. P. Miles Samuel Miller, H. Linsford, (3 days each), and others worked on said road,

Question by Sam, Was you present while the dam was being erected by Mr Orr, if so did Riley Stone and his hands work on said dam, if so please state if you know how much Mr Orr was to pay said Stone for the work of himself and hands?

Ans - I was present while the dam was being erected it was built at the time we worked on the road, Riley Stone and his hands worked at said dam I was informed <sup>by Stones hands</sup> that Mr. Orr was to



Answer  
to  
Exhibit 56

paid Mr Stone 50¢ for his and his hands  
work putting in said dam. I did not  
hear any contract made between Orr  
and Stone, all I knew was what his  
two hands told me.

And further this witness saith not.

M. C. Miles  
mark

July 1st 1884.

A. C. Bonham another witness of lawful  
age being duly sworn deposes and says.

Question by Defendant Orr.

Were you road Commissioner in the year 1872  
shown. I was.

Question by same. Did you as such open and  
build the new road around ~~the~~ Mill dam? if so  
please state how much the building of said road  
cost and by whom said sum was paid.

2 Answer. I did open said road, by order of the  
Court but to be paid for by Mr Orr. I kept  
an account of the cost of said road, and  
it cost \$43.80, which sum was paid by Mr  
Orr. I have <sup>examined</sup> the account of Mr Orr as kept by  
him on his books, and it is correct so far as  
it goes but that I see only amounts to \$28.75-  
and after the road was finished I settled  
with him and he paid the balance of the  
\$43.80 which was the total cost of said road.  
Question by same. Did you notice ~~the~~



whether or not in the building of said New Mill  
Mr J H Orr gave his personal attention and  
superintendence to said enterprise, and if so  
what do you think would be a fair price for  
his services and the care and attention given  
by him to it.

Answer — I know Mr. Orr supervised the  
building of the mill, he was clerk  
of the Courts of Lee County at the same  
time and seemed to me to be much  
pressed with business — while I don't  
know what his attention and supervision  
was worth, I would not have been  
willing to have some like service  
for less than \$100.00. I have had  
some experience in building mills  
and machinery of like kind both  
in Smyth & Lee Counties, having  
created a saw mill near Jonesville  
and now operate the same.

Prop examined by Jeff

Is it not customary when a person has improvements  
going on, and being erected in which he is interested  
to oversee and supervise the erection thereof, and is  
it not to his interest to do so?

Answer. It is customary for him to  
oversee and supervise the same and  
it is to his interest so to do.

And further this deponent saith not.

J C Bonkame



Elkanah Stewart an other witness of  
lawful age being duly sworn deposes and says,  
Question by Defendant Orr.

Were you employed by James H Orr in the  
summer of 1872. to work on his mill race, if so  
will you please state as nearly as you can how  
many days you worked, and as nearly as  
you can how much he paid you for said work.  
Answer I was employed by Mr Orr  
while he was building his new mill he  
work on his mill race, I worked  
several days but don't remember the  
exact number of days - my recollection  
is that Mr Orr paid me for  
said work between \$8. + 10¢. it might  
not be so much but it might be more.  
I boarded myself & Mr. Orr paid me \$1.00  
per day for work on said race. I remember  
that Geo. Sullivan, & others worked with  
me on said race.

I do  
claim

And further this witness saith not.

Elkanah Stewart  
his mark

James Edwards a witness of lawful  
age being duly sworn deposes and says.  
Question by Deft Orr. Do you recollect letting  
Mr Orr have some plank to use in his new mill in  
the year 1872. if so state as nearly as you can



The amount of said plank and what he paid you for it?

Answer, I let Mr. Orr have the amount of plank, I see stated in his account and he paid me for the same \$7.08. Question by same Did you haul any of the plank used by Mr Orr in the work on the old mill as repaired by Darter, if so where did you haul it from.

Answer - I did haul plank for him, which he used in constructing the cistern, race &c of the old or Darter Mill, from Pennington's saw mill I made one load per day and was engaged several days, but can not now state how many. I however know that the hauling I done amounted to over \$26.00 which was paid me by Mr. Orr.

There had to be, and a considerable amount of work was done on the race - Clearing it out and putting in troughs &c &c.

I am of opinion, but do not exactly know, that the work of every kind done in building the Darter Mill, or repairing the old mill, would reasonably have been worth or cost at least 300\$.



1 I remember that Mr. Orr got some plank from Thos. Baylor while rebuilding his new or present mill, but don't know how much.

Crops examined by Peff

Mr Edwards please state as near as you can what work you personally to have been done on the mill race in order to put the Dexter Mill to running.

Answer - I have stated as near as I can.

Mr Edwards please state whether you have had any practical experience in building mills, and if so state what that experience has been. And you will also state <sup>on</sup> what basis you make your calculations when you say you think the Dexter mill cost at least \$300.?

Answer - I have had some experience in work on mills, having assisted in building a mill on Wallens Creek, and as I have stated was engaged in hauling &c for the erection of the mill here in question and formed my idea from what I observed.

no claim And further this witness saith not  
James <sup>his</sup> Edwards  
mark

Harvey G. Flemon a witness of lawful age being duly sworn deposes and says.



Question by Deft. Did you furnish a part of the Shingles to cover the Mill of J. H. Orr if so state if you can how many and how much he paid you.

Answer. I furnished Mr. Orr 6000 Shingles to Mr. Orr for said purpose and he paid me \$3 pr. thousand making \$18.00

Question by same. Did you ever do any work or make any repairs on the house now occupied by Dr. H. L. Turner, if so who paid you for it and how much

Answer. I don't think I ever done any work on said house.

Question by same did you ever do any work on said mill or mill race if so please state what work and who paid you and how much?

Answer. I done some work about the water wheel of the present mill for which I was paid in flour or meal at the mill to the extent of 75<sup>0</sup> or \$1.00. And further this witness saith not.

Harry G. Glenor

John P. Wynn an other witness of lawful age being duly sworn says.

Question by Deft. Mr. Wynn Please state how near you live to the J. H. Orr mill?

Answer. I live within 150 yards of the mill, and was born and raised there. have always lived there



Question by same. Have you, would any at  
said Mill in repairing it since the new Mill was  
started if so please state about how much, and  
who paid you for it. also when you did it.

Answer - I have worked at said  
Mill at different times in repair  
ing the same. I kept an account of  
said work at each of said times, and  
as Mr. Orr & myself would settle, I would  
lay the account away, and I cannot  
now find all said accounts, I find  
one paper which shows that I done  
five days work in 1879, 3 days in 1881  
8 days in 1882 prior to July 31<sup>st</sup>, amounting  
to \$21.50. I performed this work as a mechanic,  
I did work for him on the water wheel  
cog wheels, race and else where about  
the mill where it needed repair, I am  
confident that Mr. Orr has paid me  
first and last at least \$50 for what  
work I done as repairs on said mill  
from the time it commenced operation  
until July 31<sup>st</sup> 1882.

I remember that Robert Lyon repaired  
the water wheel, I think in the year 1876,  
by giving the same and otherwise, I cannot  
say exactly what ~~amount~~ his work amounted  
to.



Question by same. Did you repair for Mr Orr or assist in repairing the dam. if so state the extent of said repairs and what it was reasonable worth including lumber and all materials used, as nearly as you can

Answer - I did assist in repairing said dam, I had the job under my management, and put new plank on about  $\frac{2}{3}$  of the dam. I think the entire work, including lumber and other material, would reasonably be worth \$16.

Question by same. Mr. Wynne you have lived close to said Mill, and have observed its wear and tear. Will you please give me your best opinion as to what has been the cost of keeping said Mill in repair including race dam picks and everything else about the Mill from the time it started in August 1872 down to September 1882?

Answer - I should think it had cost \$300 or more.

Question by same. Did you work for Mr Orr in erecting his mill, & dam. if so please examine his account of your work and state if you think it correct.

Ans - I did work for Mr. Orr on said Mill & dam during its erection and I have examined his accounts



of my work and payments made  
to me by him, amounting to \$31.50  
which includes \$8.00 for plank  
furnished him, and the same  
is correct to the best of my recol-  
lection.

Question by same. Did you do any work on  
the repairs of the old mill, about the year 1867,  
when the same was repaired by Samuel M Taylor  
& Michael Darter?

Answer - I don't remember that I did.  
~~As a witness for the plaintiff, this witness~~  
saith not. John P. Hyman



Robert Tammess another witness of lawful age being duly sworn deposes and says.

Question by J H Orr. Did you assist in building the New Miller's house erected by J H Orr on his Mill lot if so please state who was the contractor for building said house the size of it and as nearly as you can the price paid by Mr Orr for the carpenter's work answer #6.

Answer. I did assist in building said house, my brother Elias was the contractor said house is a one story house, with two rooms, about 9 ft high in the clear, the house is 34 ft long, 16 ft wide with a stack chimney in the center, my brother had a turn key job of the building <sup>except painting & plastering.</sup> and my best recollection is that he received for said job of work \$300. or 350 ff. but Mr Orr now refreshes my memory by stating that he paid for said work 300 ff - this work was done in the spring of 1875.

Question by Same. Who did the plastering on said Miller's house?

Answer - Drury Verrable.

Question what was the plastering of said house



reasonably worth.

Answer— I think it would be reasonably worth \$54.50 as I find by calculation that there is 185 Sqr. Yards of plastering in said room and that is putting the work at 30¢ pr. square yard.

Question by same. Did you and your brother Elias Vanhus build the granary or stor house on the mill lot if so at what price?

Answer— We did build said house for which Mr. James W. Orr paid us \$100.00. I think said house was built in the year 1877.

Question by same. Have you done any work in repairing the mill. if so please state when how much was paid you for it, and the amount paid you, as nearly as you can.

Answer— I have done work at various times, in repairing and keeping in running order said mill. I assisted erected new troughs from the road to the mill wheel, a distance of about 60 feet and at the same time we erected new trestle-work under said troughs. I think this work was reasonably worth \$15.00 and I ass-



10\$

of opinion that the other work done by me as repairs on said Mill was worth \$10.00. This work was paid for to me by Mr. Orr.

Cross Examined by Deft

Mr. Dankup please describe as near as you can the other work done by you for which, you say was worth Ten dollars, and when this work was done by you?

Answer - The work was done at various times and of different kinds such as repairing water & cog wheels and repairs of the water dam &c.

~~This work~~ <sup>was done</sup> at some time between 1877 &

Claim 1882. the precise time I cannot state.

50<sup>th</sup> Deft

And further this witness saith not.

R W Dankup

Thomas H. Fennor another witness if lawful age being duly sworn deposes and says.

Question by Deft Orr. Did you assist in building the Millus house on the Orr Mill property, and state if you know what was the price paid by Mr Orr for the carpenters work and chimney and if you do not know the price paid state what it would be worth to build said house as it was built?

Answer I helped do the carpenters work on said house. My recollection after examining some papers pertaining to the matter is that Mr



Oro paid Mr Vanhus \$300 for the carpenter  
work and chimney. That is for the house com-  
plete except painting and plastering. and  
I think \$300 is a reasonable price for said  
work.

Question by same State who did the plaster-  
ing and also what said plastering was reason-  
ably worth.

no claim Answer Answer Vanhus plastered said house  
and I agree with Mr Vanhus that 30 cents  
per sq yd would have been a fair price  
for said work.

Cross Examined by Pett.

Mr. Flemer. please state whether or not the  
building of a Miller house at a cost of \$380<sup>20</sup> was  
necessary to make the mill rent for a valuable  
price and would not a much cheaper <sup>house</sup> ~~house~~  
answer the same purpose.

Answer - I do not think the house  
for the Miller is any too costly con-  
sidering the mill property and  
its location, ~~but~~ I at the same  
time think the mill would rent  
~~for a fair price~~ without said Miller's  
house, but I think that the addition  
of said house would increase the  
rents of said mill considerably.  
Question by same - Would not a



a House which could have been erected for \$75.00 or \$100. have served the same purpose as the one erected. Answer? — To some ~~some~~ persons it would, — a man without a family might not want a house at all — some persons would not want such a house or make much difference and others would — so far as I am concerned I would make a considerable difference, a good mill house as I think would insure a good and efficient miller, whose services would insure better custom & more tolls.

And further this witness saith not

J. W. Fleenor

Wm. A. Smith a witness of lawful age being duly sworn deposes and says —

Question by Deft

Have you done any work on James W. Orr's breast mill in way of repairs since said mill has been in operation? If so please state what your work



James H Orr  
1882. To W A Smith

May 5	To 1 1/2 day work at 12/c	3.00
May 12	" 3 1/2 days work. 12/c	7.00
" "	Paid Jacob Brown for work on mill.	75
		<hr/> \$ 10.75
Oct 12	To work on mill	\$ 1.20

Copied from my books  
and paid in full by J H Orr.

Liab  
50 claimed



J. W. Orr

1877

To Crowell & Joslyn Dr

Sept 9  
1882.

13 lbs Babbitt Metal 3.25

Feb 27

6 lbs B. Metal 1.50

Recd Payment \$4.75

of J. W. Orr  
Crowell & Joslyn



amounted to, when done & who paid you for it.  
Answer - I have worked some  
on said mill, an account of which  
is herewith filed as part of my depo-  
sition, giving time and amount of  
work, which aggregates the sum  
of ~~\$12.00~~ Twelve Dollars. I was paid  
for said work by James W. Orr,  
as appears in acc't \$1.25 of this work  
was done Octo, 15<sup>th</sup> 1882.

And further this witness saith not.  
Wm A Smith

W. S. Brownell another witness  
being duly sworn deposes & says.  
Question by Deft.

Have you done any work on James W Orr's  
present mill. If so please state at what time  
you done said work, what it was, what it  
amounted to, and who paid you therefor.

Answer. I have done the following  
work on said mill Aug, 16<sup>th</sup> 1879. 2 da.  
work ~~on mill~~ @ \$4.00 Sept 9<sup>th</sup> 1/2 days work \$1.00  
Octo, 1<sup>st</sup> to 1 1/2 days work \$3.00 Aug 2<sup>nd</sup> 1881. 3/4  
days work \$1.75. aggregating --- \$9.75  
I was paid above amount by Mr. Orr.  
I remember that Mr. Orr got some  
rabbit nettle of <sup>the firm of</sup> me, which he stated was  
to be used about his mill, a bill of which  
I will hand over, in this cause.



Gross Examined  
~~Question~~ by Plaintiff

I have had some experience in  
grist Mills in the County of Washington  
Va, in that County it was customary  
for the miller to receive  $\frac{1}{3}$  of the gross  
tolls regardless of the <sup>quality of the</sup> mill or the  
millers house, but I do not know  
the custom & practice of this County in  
relation to such matters.

no claims

And further this witness saith not.

W. S. Howell

Wm Osborne an other witness  
being duly sworn deposes & says.

Question by Defendant Orr. How long  
at any time between the years 1872, and 1882  
did you work in repairing the race to J. Morris  
Mill if so please state as nearly as you can  
the number of days so worked by you?

Answer - I don't, think I have done  
less than six days <sup>work</sup>, and I may have  
done more, during the time specified  
for which work I received one dollar  
per day paid to me by Wm L. Turner  
in flour at the mill except 35<sup>cts</sup> paid  
me in a 50 cents with a hole in it. by  
said Turner, the first time I went



claim  
50<sup>cts</sup>

there to work Mr. Orr sent, <sup>me</sup> and at  
Two other times Mr. Turner came  
after me - I was paid in flour as before  
stated except the 35<sup>cts</sup>, and as to whose  
flour I do not know.

And further this witness saith not  
Wm<sup>this</sup> Osborne  
marks

Chas. D. Miles another witness  
of lawful age being duly sworn deposes & says

Question by Defendant Orr. If you  
have done any work in way of repairs  
on the Mill or Mill race of J. H. Orr since  
his new Mill was erected please state what  
kind of work, how much, and the sum it  
amounted to, as nearly as you can, and who paid  
you for it.

Ans. I have worked some on the  
race - I can safely say that during  
the time specified the work I have done  
would amount to the sum of \$10.00 -  
which amount has been paid me  
by Mr. James M. Orr some times  
he would pay me a little money &  
some times he would pay me in  
flour or meal at the mill. I further  
~~and further this witness saith not~~  
remember that I done some work



J. W. Orr.

To George H. Flemer.

1881. For repairing belts for mill.

25-

Oct. 1882. " Making driver.

3.00

Cash of iron for driver

1.66



50<sup>cts</sup>

claimed

the instance of Mr. Lurner while he  
attended the mill, I think <sup>worked</sup> 2 or 3 days  
for which he paid me in flour at  
the mill at the rate of 75<sup>cts</sup> per day.  
and further this witness saith not.

Chas<sup>Shop</sup> P. Miles  
<sup>Black</sup>

George V. Flemer another witness of con-  
fide being duly sworn deposes and says

\$1.75

I am a Black Smith and have  
a shop near Jonesville in the year  
1881, I was employed by Mr. Orr to  
make some stirrup irons with which  
to repair the water wheel of his mill  
I made several of these irons and  
I think the making of each one was  
worth 50 cts, I have done some other  
work for Mr. Orr on his mill as repairs  
since above stated time an account of  
which is here filed, <sup>as part of this</sup> which has been  
paid me by Mr. Orr. The iron used  
to make the driver here charged was  
reasonably worth about \$1.66.

And further this witness saith not.

George V. Flemer

The further taking of depositions in this  
cause is continued until Wednesday  
the 9<sup>th</sup> day of July 1884

J. A. Hyatt  
Clerk



Wednesday 4<sup>th</sup> July 1854

The parties met pursuant to adjournment  
and by an agreement at the request  
of J. F. Morgan Esq. for Plaintiff  
the taking of further proof in this  
cause is continued until Monday the  
day of July 1854.

J. F. Morgan Esq.  
Verdict re. County to wit - J. F.  
Morgan Esq. in County. He  
certifies that the foregoing  
deposition was taken before me  
at the time and for the purposes  
mentioned in the caption, sworn to  
and subscribed in due form before  
me. July 1<sup>st</sup> 1854.  
J. F. Morgan Esq.



James W. Orr.

ads on page 12

C. L. Hamblen

H. C. Miles

L. Stewart

James E. Edwards

James E. Edwards

Signatures

A. C. Bonham

John P. Brown

W. H. Lammie

Wm. H. Hester

Wm. T. Smith

Wm. J. Crawford

Wm. A. Smith

Wm. J. Miller

Wm. V. Hester

James W. Orr \$0.00

2.00

\$7.00



10th

James W. Orr

advs  
C. L. Humble

In Chancery on  
a Cross Bill.

July 14th 1884. Jm (O'Brien another witness  
of lawful age and being first duly sworn  
deposes & says,

Question by defendant. — Have you done any  
work in the nature of repairs on James W. Orr's  
mill or race since the present mill started &  
if so please state what the work was and the  
amount.

Answer. I have worked on said mill  
race since the present mill started.  
I cannot state the precise amount  
I have done — but I am confident  
I have done as much as ten days  
work on said race. 7 1/2 days before  
August 1882 & 2 1/2 days since — for  
which work I have been paid at  
the mill at the rate of \$1.00 per day.  
~~as I understood~~ I was paid out of the  
effects of J. W. Orr so I was informed.

Qx Cross examined

of the 7 1/2 days work, part was  
rendered when Burnett was miller  
part when Vandewater and part was  
rendered when Frank Wood attended  
said mill. I kept no account of  
the labor as I rendered it, I was  
paid for said work as I rendered  
the same — and the above amount

\$7.50

\$2.50



50<sup>c</sup>  
Ticket

is the most Corset Estimator I can  
make - as stated I was paid out  
of the effects of J. W. Orr. so I  
was informed - I remember that  
the first work I done was 3 days  
when Burnett had charge of the  
Mill. and for this work J. W. Orr  
gave me an order to said Burnett  
for pay. I do not remember exactly  
as to the balance of the work  
except the 2 1/2 days since Woodward  
came to the mill - and my estimate  
is now made as to that balance  
from my best memory.

And further this witness saith not  
The J. W. Orr  
mark

\$2.00

50<sup>c</sup>  
Ticket

John Hall another witness being  
sworn deposes & says -  
that he remembers to have  
done some Smith work on Mr.  
Orrs Mill before August 1882, and  
said work was done during the years  
1880-81 - I do not remember the kind  
of work I did precisely, but it was  
something about the troughs, and my  
best recollection is that the work  
amounted to something over \$2.00 &  
for this Mr. J. W. Orr paid me  
And further this witness saith not  
John Hall



L. P. Fleener an other witness  
being duly sworn deposes & says -

I done some work on the mill  
race since the mill started, and before  
Mr. Woodward took charge of the mill  
I cannot state the precise time I worked,  
but my best estimate is that I worked  
five days - for which Mr. J. W. Orr  
paid me 75<sup>cts</sup> per day.

And further this witness saith not.

Littleton P. Fleener

H. C. Rutherford an other  
witness of lawful age being duly  
sworn deposes & says -

I have examined a transcript  
from my books, <sup>made by J. W. Orr</sup> stating an account  
of work done on his mill, which  
is true and the charges there made  
are reasonable & correct, and the  
same has been paid me by  
James W. Orr. which account  
is therewith filed.

And further this witness saith not  
H. C. Rutherford  
mark

Jesse Trent an other witness being  
duly sworn deposes & says

\$3.75

\$1.00<sup>c</sup>

Ticket

50<sup>c</sup>

Ticket



I know the fact that S. S. Cole repaired the water wheel of the mill belonging to J. W. Orr, and I assisted in the work, we built a new water wheel out and out, except the shaft, filled two wheels with new cogs, and repaired a bolting chest, put on new bolting cloth, and repaired some spouting. This work was done in July & August 1882. Mr. A. Miller also assisted in doing this work. I think we were engaged in doing this work about five weeks, but don't recollect precisely as to time, during this time we were boarded by Mr. Orr at his house. We generally have to pay \$7.50 per month for such board and accommodations as Mr. Orr furnished us - and I think this board was worth that sum per month.

I know the fact that Mr. Cole on a contract was to have 40¢ for the water wheel, 15¢ for work on bolting ~~chest~~ and 11¢ for work on cog wheel making in all \$66.<sup>00</sup>. I saw Mr. Orr

Board  
\$28.12 1/2



50<sup>c</sup>  
Sicket

pay Mr. Cole money at two different times, and Mr. Cole has informed me that he has been paid the 66¢ for doing said work by J. W. Orr. — Mr. J. W. Orr furnished the material, lumber nails &c with which we done said work my estimate is that the lumber that was used in repairing ~~the~~ <sup>the</sup> ~~trailing~~ <sup>trailing</sup> Chests ~~Shouts~~ <sup>Shouts</sup> &c was reasonably worth \$1.50 dried & delivered.

And further this witness saith not  
J. L. Trent

John Good another witness of lawful age and being first duly sworn deposes & says.

I have worked for Mr. J. W. Orr on his mill since he started his present mill up to the time Mr. Woodward commenced attending said mill as follows to wit, on the race from 7 to 8 days and since Turner sold to Hambleton something over 2 days making in all about ten days — for this work on race, Mr. Orr paid me at the rates of \$1.00 per day for the first 7 or 8 days and for all services rendered since I was in Mr Orrs employ by the year.

\$7.50

10 \$2.50



Since March 1882, I have been hired  
to Mr Orr by the Year, and from  
that time to Sept 1882, I worked  
about the mill as I was directed  
by Mr. Orr. in cleaning out the <sup>tail</sup> race  
in repairing wall at water wheel,  
taking out rock under water wheel  
and labor in repairing Co's some  
8 days according to my best estimate  
at this time, I remember to have  
hailed lumber for repairing the  
water wheel some five days, using  
Mr. Orr's Team & wagon, I also remem-  
ber hauling load of lumber from  
Browning's Mill to make troughs about  
500 ft. I also remember <sup>ever</sup> that I worked  
one day about the mill dam  
I think my services <sup>with</sup> the wagon & team in  
hauling the 5 days was reasonably worth  
3\$ pr day & the hauling from Browning's  
mill was worth 50 cents - the usual price  
for a days work when a hand boards  
himself is 75¢ pr day.  
I think the 500 feet of lumber above  
referred to as hauled from Browning's  
1 1/2 inches thick was worth \$7.50.  
Also I also remember of hauling 2 loads of  
lumber out of the ridge for mill troughs  
along the race

\$6.00

\$12.50

75

\$7.50



\$18.91

\$1.50  
cts  
50  
Ticket

which I, in company with John P. Hyman have lately measured and find that there is 1261 feet of said lumber, this lumber is  $1\frac{1}{2}$  inches thick and is reasonably worth \$1.50 pr. hundred ft, and the hauling was worth about \$1.50.

And further this witness saith not  
John <sup>his</sup> ~~X~~ Lord  
Marso

Jefferson S. Miles another witness of lawful age being duly sworn deposes & says.—

I am now about 23 years old. and from the year 1882 down to August 1888 I worked often on the mill race and while I have <sup>kept</sup> no account of the number of days worked during that period my best estimate now is that I rendered during that period not less than 12 days services and since Hambleton has had an interest in said mill I have done 4 days work, for the first 12 days I was paid at the rate of 50¢ pr day by Burnett & Vandeventer, out of the mill, and for the last four days I was paid by Mr. Wooding Four Dollars in the same way

\$10.00

\$10.00



33<sup>2</sup>  
Ticket

And further this witness saith not  
J. H. Miles

\$1.00

cts  
50  
Ticket

M. B. Rutherford another witness  
of lawful age being first duly sworn saith  
I worked on the water wheel & gearing  
of Mr. Orr's Mill, I think in the spring  
of '82. Two days for which Mr.  
J. W. Orr paid me \$1.00.  
And further this witness saith not.

M. B. <sup>his</sup> Rutherford  
marks

work, 50<sup>c</sup>  
no claim

The Plaintiff admits one days work  
on race by John Bergain at .50<sup>c</sup>.

July 16<sup>th</sup> 1884.

John Miles another witness of  
lawful age being duly sworn  
deposes and says -

\$9.75-

My best recollection is that  
I have done about 13 days work  
on Mr J. W. Orr's Mill race before  
Mr Woodward took charge of the  
mill for which I was paid 75<sup>c</sup>  
per day, by Mr. Orr. and by his  
Millers Vandewater & Burnett, in  
orders to Store & at the mill.



15  
Aug.  
Since 1882.

\$2.00

1.00

and I have done two days work on  
race since Mr Woodward has been  
attending said mill for which I  
was paid at the mill \$1.00 per  
day by Mr. Woodward. I also worked  
on the race yesterday for which I  
have not been paid.

I remember that Baxten Harrison  
worked at the same time I did  
two days on said race, before  
Woodward came to the mill  
I do not know what he was to  
receive for his work, he was at  
that time employed as a farm  
hand by Mr. Orr.

In the Year 1883, January, after Mr.  
Woodward came to the mill, I  
was in the employ of Mr. N. B.  
Hawley, and we got out for  
Mr. Orr 500 Cogs & I hauled them  
to the mill, and I understood that  
Mr. Hawley was to get 2<sup>c</sup> per Cog. in  
payment from Mr. Orr. I received  
this information as regards price  
from Mr. Hawley. Mr. Orr also in-  
formed me that he was to pay, and  
had paid said Hawley 2<sup>c</sup> per Cog.  
for the 500 Cogs delivered  
And under this contract said Mr. Orr

Since Aug 1882

\$10.00

30.  
Ticket



Elabe Humble and other witnesses of lawful age being first duly sworn depose and say.

I furnished James H. Orr \$13.78 worth of lumber for the repairs of the water wheel of his mill in the year 1882, I also let him have 16 wide oak plank 10 ft long and 1 1/2 in thick and hauled a load of said lumber for which I charged him 10 cents making a total of \$15.78, this lumber was all used about his mill and Mr. Orr paid me the above amount, and he paid M. D. Richmond a like sum of \$13.78, for sawing the entire bill of lumber for water wheels.

And further this witness saith not.

Charles H. Richmond

July 21<sup>st</sup> 1884

Guss Talley an other witness of lawful age being first duly sworn says.

I painted the millers house which is erected on Mr. J. W. Orr's mill property, for which Mr. J. W. Orr paid me \$30.00. Mr. Orr furnished the paint, which material was reasonably worth or cost at that time \$26.00.

And further this witness saith not.

Gus. Talley

13.78  
1.40  
15.18

15.78

32<sup>nd</sup>  
Tally

37<sup>th</sup>  
Tally



July 26<sup>th</sup> 1884

William Woodward being again introduced and duly sworn deposes and says

I was present when Wm. L. Turner gave up or surrendered the key to the Store house which is situated on the mill property <sup>to Mr. J. W. Orr</sup> My best remembrance is that it was in April 1883. Mr. Turner had been using the house as a granary and had corn stored away in the house - ~~from~~ <sup>apart of</sup> the time <sup>from the time</sup> I came to the mill in Sept. 1882 until he turned over the key to Mr. Orr in April 1883.

And further this witness saith not  
Wm. Woodward

It is admitted by the parties that the cost of repairing the water wheel by Lyons including the material cost Twenty Six (26) Dollars - which was done in the year 1877. in the month of February - and paid for by J. W. Orr.

26.00



James W. Orr  
you + Bill  
ads 3 Depo.

C. L. Hamblen

Am Woodward,

W. P. Miles

John S. Hall

L. P. Fleener

W. L. Rutherford

J. L. Trent

John Good

Jeff. Miles

W. B. Rutherford

John Miles

Clara Hamblen

Guss. Selley

12 wit Claim \$7.00  
Cost \$1.80

\$8.80

The foregoing depositions were taken  
by me sworn to & subscribed before  
me at the various times & places therein  
stated. Aug 6 1887. J. A. St. Paul  
(Came)



James W Orr.

Lo Williams Rutherford

Dr

881.	Deer	Lo 2 wedges	.50
		" repairing mill irons	.75-
		" cutting 4 screens	.30
		Fixing mill irons	.07
882.	June	" Two bands - two wedges.	.50
		" 18 cross ties for water wheel	1.80
		" Making 11 bolts	2.75-
	Aug	" 2 bands for bolting chest.	.50
		" 2 bands for bolting chest.	.50
		" Sharpening mill picks	1.00
		" welding styrops	1.30
		" making 8 styrops & 8 bolts for water wheel.	2.50
		" One furrich & 2 washers	.20
		" ten sharpenings of mill picks	1.50
		" Two days work on mill race	1.50
			\$ 15.60

The above account was paid to me by  
James W Orr. W & Rutherford



Orn, on x Bill  
ads  $\frac{1}{3}$  acct.  
Hamblen \$15.60

Rutherford

Admitted by  
Counsel for Plff  
Hamblen & Turner

July 14<sup>th</sup> 1884.

Hyatt  
Counr.



1 C. L. Harbison } In Chancery &  
200 James W. Orr } Bill -

The depositions of Linn Myron  
& others taken at the Clerk's office of  
the Circuit Court of Lee County on  
the 17th day of July, 1888 at the time  
of taking an account in the ab-  
ove styled Cause.

Linn Myron a witness of Lawful  
age being first duly sworn deposes says  
Question by Plaintiff's witness answers  
generally -

As well as I now remember  
I was employed by and done  
3 days work for Wm. L. Turner on  
J. W. Orr's Mill race during the  
time Mr. Turner was attending  
the mill, for which work Wm. L.  
Turner paid me \$1.00 per day.

Cross Examined.

I have done 3 days work on  
said race, since Mr. Woodward  
has been attending the mill, for  
which work Mr. Woodward  
paid me in the store at the  
mill \$1.00 per day.

And further this witness saith not  
T. C. Myron

50<sup>c</sup> Ticket



William Woodward an other witness  
of lawful age being duly sworn deposes & says -

I have been sweeping Mr. J. W. Orr's  
mill since Sept 12<sup>th</sup> 1882 down to  
to this time, I have been living in  
Mr. Orr's new Millers house during  
the same period, by my contract  
with Mr. Orr. I was to have one  
third of the gross earnings of said  
mill and the use of said house  
& the garden attached thereto,  
the gross earnings of said mill  
from Sept 12<sup>th</sup> 1882. to July 12<sup>th</sup> 1884.  
being one year & 10 months, are as  
follows, - I have taken in during  
this period in the way of tolls 801  
Bushels of wheat and 378 Bu. corn  
My judgment is that the average  
cash price of wheat for the time  
I have been attending the mill is  
90 cents <sup>per Bu</sup> and the average price of  
corn for the same time is 50c  
per Bu. -

I have an account of expenses  
for repairs and running the mill  
which I herewith file, which has  
been, as well as the account of the  
tolls, accurately kept by me  
these expenses amount in the aggregate  
to the sum of \$14.42



50<sup>cts</sup>  
Ticket Mr. Orr & myself bought what is known as an Emory dress for sharpening the mill <sup>stones</sup> for which I contributed 2¢ and Mr. Orr paid 4¢. which I consider was a judicious purchase. it saves me labor & time cost of keeping him in service. Wm Woodward

50<sup>c</sup>  
Ticket Ales D. Wynn an other witness being introduced and first being duly sworn deposes and says - I am acquainted with the house and lot now occupied by Mr. E. Lurner - and am of opinion that it ought to rent for 30 or 35¢ per year. - From the 12<sup>th</sup> day of Sept 1882 down to the present time I think that 80<sup>c</sup> per Bu would be a fair <sup>average</sup> price for wheat. And further this witness saith not.

Ales D. Wynn  
James Miles an other witness of lawful age being duly sworn deposes and says During the time that Mr. Lurner occupied the mill, I was frequently employed by said Lurner to clean out the race, repair the troughs &c



My best recollection is that I  
worked not less than 10 or 12 days  
during that period, for which  
Mr. Turner paid me 75-cents per  
day, mostly in flour at the mill, but  
he paid me some money, not to  
exceed, as I remember \$1.00. I don't  
know whether said Turner paid  
me out of effects of his own, Mr.  
Ors or out of tolls which belonged  
to the mill. I once lived up  
the creek above the mill and  
I think it was customary for  
the Miller to keep the <sup>staked</sup> ~~leaps~~  
the troughs in order, and a part of the  
work I performed was of this kind,  
but the greater part of said  
work was in clearing out the  
race after rains.

I have <sup>cross examined</sup> lived near Mr. Ors mill  
about 8 years - and I know the  
fact that Mr. Turner has used  
and occupied a stable on the  
opposite side of the road from  
where his house stands, I have  
frequently seen his mule in said stable,  
I think a fair rental value of such  
a stable would be reasonably worth 75  
per month.

And further this witness saith not.

James Miles

50c  
Ticket



James Burnett an other witness of lawful age being introduced and being first duly sworn deposes & says-

I attended Mr. Orr's Mill some thing over 4 years as stated in my former deposition in this cause, and during a part of that time I lived in and occupied the house and lot in which Mr. W. L. Turner now lives but the length of time I do not remember. Mr. R. Graham lived in said property before I did and Elias Varibus afterwards, but the length of time they occupied the property I cannot state. And further this witness saith not

James Burnett  
deposes

50cts  
Ticket

James Turner colored another witness of lawful age being introduced and after being first duly sworn deposes and says. I have lived with Mr. Wm. L. Turner ever since I was a boy and lived with said Turner at the time he lived at and occupied Mr. Orr's Mill as miller, and during the time, my last recall



is that I performed as much as 12 days work in assisting hands in clearing out the race after heavy washing rains - I think I done average work with the other hands. I was directed to perform this work by Mr. Turner with whom I was living.

I done several other days work which I considered was the millers duty to do - I think I done about 5 or 6 other days work at the mill at other work I helped to make wedges & trim Co go - and I don't remember what else.

#### Lesass Examined

I have lived with Mr. Turner ever since he came or moved back to where he now lives down to last fall except ten months, and I know the fact that Mr. Turner has occupied a ~~small~~ stable which is on the opposite side of the road from his house and lot during the time I was with him & he is now occupying it. And further this witness with not

James <sup>his</sup> Turner  
mark

50<sup>c</sup>  
Ticket



John Wynn an other witness  
being duly sworn deposes & says

Mr. Wm. L. Turner employed me  
to work on a Store house which  
was erected on the mill lot of  
James W. Orr, it strikes me that  
I worked 12 days for which Mr.  
Turner paid me \$1.25 per day.  
Mr. Turner furnished the lumber &  
material with which the work  
was done - My best estimate is  
that the lumber ~~delivered~~ was  
reasonably worth \$7.20 + the haul-  
ing \$1.50 Total \$8.70 - I think there  
was about 800 ft of the lumber  
and I think there was used in  
doing said work about 15 lbs nails  
reasonably worth 95 cents

I think that the house and lot  
in which Mr. Turner now lives  
and occupies, would be reasonably  
worth 30 or 35\$ annually in rents -

I remember that David Orr,  
Michael McElure Samuel M. Taylor  
and W. R. Graham James B. Burnett  
and Elias Vanhus each lived  
in said property, but I do not  
remember when either one came  
into or left said house or land



either one of them occupied it.

I also remember that apart of the time the house was unoccupied by any one, but I cannot say as to the time it was vacant.

### Cross Examined

In my deposition given in this Cause on a previous day to this ~~and~~ I failed to embrace in my estimate <sup>then made</sup> work that I had done in clearing out the race and work on troughs, I am confident from an account which I find in my papers that I done \$7.50 worth of work on the race - and about \$3.00 worth of work ~~in~~ in making & repairing troughs -

My understanding was that Mr. Turner was to have the use of the store house for one year for making the repairs he made in said store house - I heard Mr. Turner say that he was to have it in this way. Some time after this I saw Mr. Turner opening & shutting the door of said house locking & unlocking the same -



I know the fact that Mr. Turner uses the stable on the opposite side of the road from his house & lot. I consider that the rents of the stable is reasonably worth annually \$5.00 or 50 cents per month.

~~Re Examined in Chief~~ -  
Question by the Plff -

Please state what millers generally receive for attending and running mills

Answer. They generally receive one third of the gross tolls.

Question by same - Do they not generally get one third of the gross tolls of the mills they keep, whether the mill is a good or inferior one?

Answer They do.

Question by same - Are you acquainted with Mr. Orr's present mill, and have some general idea of the custom it receives and the amount & quality of the grinding it does, if so please state whether in your opinion the mill could be rented out to the same



Miller of the Country for one third  
of its gross earnings if there was  
no Millers House connected therewith  
or at all events could the same not  
be rented or leased with a millers  
house connected therewith, which  
would not cost more than  
\$100?

Answer I am tolerably well acqui-  
ainted with the mill & its custom  
and the amount & quality of its  
grinding, and my opinion is  
that some millers would take  
the mill for  $\frac{1}{3}$  of <sup>its tolls</sup> if there was no  
millers house connected with it, and  
I am confident that it could  
be so leased with a millers  
house that would not cost  
more than \$100.

Question by same — If Mr. Orr's  
mill with a millers house said  
to have cost \$383.20, rents for no  
less than one third of its gross  
earnings, does it not follow in a  
pecuniary point of view that the  
cost of the present house beyond  
that of an ordinary one was  
an injudicious & unnecessary expenditure?



Answer. — I think it would be an injudicious expenditure but at the same time the better house would add value to the property, would perhaps have a tendency to secure a better miller and might possibly attract more custom.

— Case examined by D. T.

Q. by same. Do you think it beheld that the mill's operation of could be leased to a good miller with a family, who he would take without a house looking to live in?

Answer — I think it could.

Question by same. Is it not customary in this country for mill owners to furnish their millers with good comfortable houses to live in, costing generally from two to four hundred dollars & give them half the toll?

Answer — It is customary to furnish the houses and give  $\frac{1}{2}$  of the tolls, but as to the cost of houses, some would cost 300\$ and some less & some more. Most millers in this country have families.

Question by same.

Do you or not know the fact that James H. Orr gave his personal attention to the



building of the present mill & employed  
as a foreman & set up the mill & took  
after the work & instruction of said mill.

Answer - I do.

Question by same. - What do you consider his  
aid services reasonably worth?

Answer - I consider that such super-  
vision would be reasonably worth \$50.<sup>00</sup>

Question by same. - Has said Orr not given his  
personal attention to the repairs & keep-  
ing the mill in order since it started?  
& if so what has his services been worth  
by the year?

Answer - Mr. Orr has given his personal  
attention to the repairs & keeping the  
mill in order since it started  
and I consider that his services  
in this direction have been  
worth \$10.<sup>00</sup> per year.

And further this witness saith not.  
John P. Wynn.

Mr. J. W. Orr admits that he  
received from Newton Wygal  
& is to receive from L. B. Fleming  
rents for the store house situated  
on his mill lot from the 22<sup>nd</sup> July  
1883 down to the present time at the  
rates of \$2.<sup>50</sup> per month.



Newton Mygas an other witness  
of lawful age being duly sworn  
deposes and says -

I am of opinion that an average  
price of wheat for the last 22 yrs.  
in this section, is 90 cents. that  
is such as is usually received  
at the mill in tolls.

50°  
Secret

I remember that John Mygas  
repaired the store house on Mr.  
Orr's mill lot in short time  
before November 1<sup>st</sup> 1881.

And further this witness saith not  
N. Mygas

July 26<sup>th</sup> 1884

The said Newton Mygas being  
again introduced and being  
first duly sworn deposes says  
I am well acquainted with  
the house and lot now occupied  
by Wm. L. Turner and I think  
it is reasonably worth in annual  
rents \$36.00 at all times at any  
time I would have given the  
above amount as a yearly rent  
for said house and lot.

And further this witness saith not  
N. Mygas



July 28<sup>n</sup> / 1884  
Littleton P. Fleener, an other  
witness being introduced and first duly  
sworn deposes and says.

My recollection is that some  
4 or 5 years ago, I was employed  
by Mr. L. Turner to repair a stable  
situated on Mr. Orrs. mill lot,  
and I did make and haul new  
boards took off the old boards  
and put on the new ones and  
made a door to said stable  
for which Mr. W. L. Turner paid  
me \$12.00 I consider that I was  
well paid for said work, I saw  
the work by the job under contract  
with Mr. Turner.

2. 50<sup>c</sup>  
Claimed

And further this witness saith not.

Littleton P. Fleener

W. S. Martin an other witness being  
first duly sworn deposes and says.

Question by the Plaintiff— Are you acquainted  
with Mr. Orrs present mill, and have some  
general idea of the custom it receives and the  
amount and quality of grinding it does:— if so  
please state whether in your opinion, the  
said mill could be rented out to the average  
millers of the country for one third of



its gross earnings, if there was no millers house connected therewith or at all events could the same not be so rented or leased with a millers house connected therewith, which would not cost more than one hundred dollars? or 150\$. —

Answer I am very well acquainted with Mr. Oris mill it being situated near where I live — I think it gets a very fair custom, and the grinding it does is on an average with the best mills in the Country. I don't know whether it could be rented out without a millers house or not. I am of opinion that the mill could be rented to the average miller <sup>of the Country</sup> with a house for the miller to live in at a cost of 150\$. — for one third of its gross earnings.

Question by same — If Mr. Oris Mill with a Millers house said to have cost \$409.20 rents for no less than one third of its gross earnings, does it not follow in a pecuniary point of view that the costs of the present house beyond that of an ordinary one, was an injudicious and an unnecessary expenditure so far as the life tenants Turner & wife are concerned.



Answer I think it would be so far as  
Turner & wife are concerned.

Question by same - Are you acquainted with  
the House & Lot where Mr. Turner  
now lives - If so please state what  
would be a fair and reasonable  
annual rent therefor?

Ans. I am very well acquainted  
with the said House & Lot and  
I think that \$35.00 would be a  
reasonable annual rent therefor.

Cross examined by dep.

Question by same - That two mills are located near the  
mill the second house of Mrs. Orr's mill and how  
far are they from said Orr's?

Answer Dr. Brownings on the same creek  
about one mile from Mr. Orr's, and  
Col. Pidemores which is situated  
near Jonesville and about 1 1/2 miles  
from Mr. Orr's mill.

Question by same. Please state what kind of houses  
are occupied by Dr. Brownings & Col.  
Pidemores Miller as near as you can  
be known with such information.

Answer Dr. Brownings is about equal in  
commencement & cost of construction  
to that of Mr. Orr's, and Col. Pidemores  
Miller now lives in a more costly  
building, but when he first took charge  
of Pidemores mill, he lived in a small



occupied not so good a House.  
 Question by same. - Is it not a fact that there has been  
 great improvement in this country both  
 in Mills & Millers Houses since the war?  
 Answer I think there has been great improve-  
 ment.

Question by same. - Do you think that James H. Davis  
 Millers House when we consider the quality  
 of his Mill and its location is beyond the  
 average cost of such houses in the country  
 or even more than it ought to be to secure  
 the services of a first class miller with a  
 family?

Answer I think the better house would have  
 a tendency to secure the services  
 of a better miller. I have no  
 definite observation of other mills  
 or millers houses except those above  
 referred to,

Question by same. - Do you not think the life tenants are  
 interested in securing the services of a good  
 miller, as well as the fee simple owner?

Answer I <sup>think</sup> they would be interested in securing  
 the services of a good miller during  
 the continuance of their interest.

Question by same. - Does not the poor knowledge in regard  
 to Millers houses and farms which you speak of  
 come from sheer ignorance & not from any actual  
 knowledge of what they require of their employees?



Answer It does.

Question by same. - What do you consider James W Carr's services in having this breast mill built were reasonably worth?

Answer - I consider that such services would be reasonably worth from \$75.00 to \$100.00.

Question by same. What do you think said Carr's services were reasonably worth in looking after the running of the mill & keeping it in repair by the year, since it started up to the present time?

Answer - I would think that it would be worth something like 10¢ per year. Your Lord further this witness saith not.

W. L. Martin

July 29<sup>th</sup> 1884.

James B. Bennett an adult witness of lawful age being again introduced and duly sworn deposes and says -

I have been accustomed to attending mills ever since I was 18 years old and I am now nearly 74 years old, and in the Eastern portion of this State where I was raised, it was customary for the owners of mills to furnish wood for the use of the mill, and so far as I have attended mills



in this Country the same rule  
has been observed by the owners  
of mills with me, I attend Mil  
barns mill about 15 months  
and Orrs mill some over 4  
years. since I came to this Country.

Cross examined by deft.

Question by same.

Was not yours & James W Orr's contract  
in writing? Or <sup>at least</sup> ~~anyway~~ was not  
arrangement in regard to the furnishing of the  
wood by a strict contract between yourself & him?

Answer If there was any writings between  
us, I don't now remember it,  
but there was a contract between  
us that he was to furnish the wood.

Question by same. Do you know what kind of Contract  
other millers have in this Country <sup>in regard to furnishing</sup> and do  
you know what kind of Contract Wm L  
Orr has had?

Answer I do not.

Question by same. Your observation in regard to what  
is customary in regard to the furnishing wood  
was in Eastern Va and not in this Country  
except as to yourself?

Ans. That is the case.

Question by same. Is not the matter dependent entirely  
upon the Contract between the parties?



Ques It is.

Question by name. Do you think the Millers house on  
James H Orrs Mill lot too costly house for  
his mill.

Answer I do not, I have lived in a much  
better and more costly millers house.

He examined in chief

Question by Peff. Have you tenent for life in the  
Orrs Mill, and intitled by contract to one fourth  
part of its nett earnings, would <sup>you</sup> like for your  
share of the tolls to be cons. med in the erection  
of a fine Millers House, where a life costly House  
would answer the purpose?

Answer I dont consider the house too fine  
if I had an interest in a mill I  
would want a good millers house  
and a good miller in it, a good  
house ensures a good miller.

The Peff objects to the last answer because it is  
not responsive to the question. Motion for Peff.

Cross examined again

Question by Peff.

If a good millers house is necessary to  
secure the services of a good miller, <sup>is it not a judicious investment</sup>  
that the furnishing or building of such house  
will be benefit to all parties interested  
in the mill, and is it not a judicious investment

Answer It certainly does, and such an investment  
would be judicious.



He examined by Peff.

House State how the case would be wrote up  
in response to the question of the right  
were you only tenant for life?

Answer Perhaps I would not be so keen for  
improvement as I would if I had  
a fee simple right, but to secure a  
good miller and a good custom  
in any event I would be in favor  
of making a good improvement, and  
I do not consider the House in  
question an unnecessary improvement.

Question By same, did you not live a part of  
the time you attended the Ows Mill in the old  
House now owned by Mr. S. Tanner, and a part  
of the time in the new house, and did <sup>not</sup> said  
mill, receive as good a custom while you  
occupied the old House, as while you lived  
in the new House?

Answer I did live the most of the time in  
the old house, I saw no difference in  
the custom when I lived in the new house  
And further this witness said not.

James B. Burnett  
Mar 10

It is agreed between the parties  
that the foregoing deposition so  
far as it relates to the item  
of wood is withdrawn and not  
to be considered there being no  
dispute on that subject.



The foregoing depositions were  
taken, subscribed and sworn to before  
me at the various times stated in  
due form Aug 6<sup>th</sup> 1884.

J. A. Hyatt Comr.



W. L. Hamblen  
Bill  
as Dep't.  
James W. Orr.

W. L. Wynn  
1100 W. Wynn  
A. P. Wynn  
102 Jas. B. Burnett  
John P. Wynn  
Jas. Turner  
102 A. Mygal  
L. P. Llewellyn  
Wm. S. Martin

10 wit Claim \$5.50  
cost 1.80  
\$7.30



(1st)

The depositions of M. Dr. Richmond  
H. C. Bonham and ~~others~~ Taken  
pursuant to agreement on the 17<sup>th</sup> day  
of February 1883 pursuant to agree-  
ment <sup>before me H. C. Gadsden a Justice of said County</sup> to be read as evidence in behalf  
of the Plaintiff in a chancery suit  
now pending in the Circuit Court of Lee  
County Virginia in which James W  
Orr is Plaintiff and Wm L Turner  
and others are defendants.

H. C. Bonham, a witness of lawful  
age being first duly sworn deposes & says,  
Question by the Plaintiff. Are you  
acquainted with the James W Orr Mill  
property?

Answer I am,

Question by same. Were you acquainted  
with it ~~and~~ its condition at the time  
he purchased from Wm L Turner.

Answer I was to some extent. I had seen  
it frequently.

Question by same. What would have been  
a fair cash value of said property in  
the condition it was in at that time.

Ans. I would consider six-hundred dollars  
a very fair price for it.

Question by same. Are you the owner  
of, or have you some estate to any extent



in mill property or Water Power.<sup>2</sup>  
Answer, I have had some experience with mills  
and water power, I now own and  
operate near Jonesville, a small <sup>Low</sup> mill,  
which I would sell for Six hundred  
dollars,

### Crop Examined

If \$2000, would erect a mill  
and machinery on the old mill  
site equal or better than the one  
now there, and then said mill  
would thus erected, earn by its  
Customs tolls say \$700 annually  
would you not say upon that  
supposition said site would  
be worth much more than you  
now estimate?

The above question is objected <sup>to</sup> being  
as it is based on suppositions that  
apparent have no existence in fact

Done same for ~~the~~

Answer

I doubt it: My experience is the  
keeping up of the machinery of a  
mill, runs away with a great deal  
of the profits

If Mrs. Mary Hymn in 1868, and  
subsequent thereto could have



and did actually sell to him on one half of said property for \$935 - would you not think the other half owed by Wm L. Turner as worth that much? or would you doubt that?

The above question is objected to being based on it is on a supposition that has no existence in fact, as shown by the pleadings in this cause.

Reason for objection

Answer

Often times a piece of property sells for more than it is worth, and the supposition contained in the question does not change my judgment as to the worth of the property.

Question - Do you then base your estimate of the value of this property upon your judgment of what it is worth or do you estimate from what the property would sell for on the market, supposing a reasonable credit of over two years to a man seeking such property?

Answer,

I make the estimate on my own judgment,



Will you then give me what you would, regard as a fair market-able value of said site 1868, on a credit of 10 2 years, to a party seeking such investment and able to purchase?

Answer, Upon that time, in my judgment it is worth from Six to Seven hundred dollars, If I understand you, you would not give or value said site any more or less on account the amount of tolls accruing?

Answer. I - would not;

Witness Claims And further This deponent doth not,  
1 day 50-cs. M-C Bonham

M. D. Richmond another witness of lawful age being duly sworn deposes & says  
Question by Plaintiff.

Are you acquainted with the Orr Mill property, now in dispute in this cause?

Answer I am

Question by Same. Were you acquainted with said property in 1868 when Orr bought it from Turner - if so what would you regard as a fair cash price for said property in the condi



Tion it was then in. There being in  
said Mill Tract about 40 acres. The old  
race and the house in which Dr Turner  
now as then resided, and stable just  
across the road and an old mill on  
said property-

Answer The mill when it was finished  
I would think was worth 3000<sup>00</sup> \$.  
I suppose it cost about 2000<sup>00</sup> \$ to build  
mill house, the machinery &c. which  
would leave the mill site land &c. worth  
1000<sup>00</sup> \$ -

Question by same, Have you had  
any experience as the owner of mill  
property or Water power, if so please  
state it.

Answer I had an interest in the Long Mill  
property about 9 miles West of Iremonger  
for upwards of 4 years.

Cross Examined -  
If Mr Orr Mill, cost less than  
\$2000, to construct it, or if it  
could now be sold in the mar-  
ket for say \$4000, would that change  
your estimate of the value of the  
site?



Answer

I don't think the site land &c. at the time Orr purchased it was worth over 1000 \$ - and I further state from what experience I have had in building or rebuilding a mill, that it cost fully 2000 \$ to build house. other work and Machinery -

Question.

If the cost is as you put it and the out lay is \$3000. And then this mill thus costing \$3000, would earn by its net tolls say \$600, would you not think the investment in the site of \$1000, a very remunerative outlay.

Answer I would.

Then if a mill could be put upon said property at a cost of \$2000, and when constructed the mill by actual, receipts shows a net earning as aforesaid of \$600 would you not on that hypothesis put the site higher than \$1000 - 00.

Answer

I don't think the site &c. as before stated worth over the amt. I have stated. Then your estimate of the mill site is not based on the amount of tolls received or the amount repaid by the millage.



Answer my estimate of the value property.  
of course is based upon the supposition  
that the mill has a good custom,  
& that the tolls to the owner is worth  
something like 4000 francs.

Question.

Please give the percent. in figures  
which you regard mill property  
should pay on the gross value of  
site & construction.

Answer to pay well it should be 20 percent.  
At that rate, how long would it  
take the profits of the mill, to  
extinguish the costs of construction  
and leave the property, as net gain.

Answer if there was no expenses about the  
property, it would take only 5 years,  
but legal interest on the money & wear  
repairs, rebuilding &c. I don't think  
there could be more than 10 per cent.  
left on the money invested, and  
hardly that much.

If a mill is properly constructed  
in workmanship & material, is there  
much repairing for the first five or  
even ten years. That is supposing it  
to be well done at first?



Answer there is probable not a great deal of repairing to do for the first 5 years, in 10 years I would think from what I hear Miller says that the Machinery building &c. does depreciate very much in 10 years & particularly the Machinery, as a great deal of new Machinery in that time is needed, and the wear of Machinery is at least 10 per cent.

~~Have you~~ <sup>How long</sup> have you been long in business in this Community, and have you a general knowledge of the business interests of the Community? If so please state what other pursuits of life can be relied on here to pay even 10 per cent over or above the cost or expense of running the same?

Answer. I have been in business here about 28 years, there is few pursuits if any that a man can realize 10 per cent. on Capital invested.

Reamined

Question by same. You stated a moment ago that you had kept an estimate of the net earnings of your mill for 4 or 5 years. will you please state what those net earnings were per year and also what percent those net earnings were upon the total cost of said property?



The above, question is excepted to because it does not bear upon the question, of the loss of our mill and is irrelevant to the questions involved in this case. And because it is a question ~~involved~~ in chief and should have been, asked in chief.

Morgan & Pilemore

Answer

I kept an account of the net earnings of the mill known as Lugs Mills for about 4 years. The proceeds after expenses, the mill being new, was about 400 \$ per year besides the Millers part. The percent on the cost of said mill property, being about 13 to 15 per cent. expenses on machinery or repairs being about 110 \$ - about 6 mos. the mill did not work on account of building stone dam &c.

Re. Crops examined.

Please state, what year the mill you speak of was completed, and whether or not the same has not continued in good repair to the present except small repairs such as above spoken of?

Answer

The mill completed except stone dam, in Feb 1870. the stone dam commenced



in the latter part of the summer of 1869  
& finished in Feb'y 1870 - the cost of the  
Mill & <sup>skilwe</sup> 40 acres mostly good land  
being I think 3000\$ -

If you have any practical experience  
in farming please state about the  
amount necessary to ~~be~~ <sup>be</sup> expended annually  
to keep a farm in good repair, ~~and~~  
the cost of which would be say \$3000  
and supposing it to be in good repair  
running through a period of 10 years?

Answer I think it <sup>mill</sup> cost about 3 to 5 per cent,  
annually.

What per cent does your experience  
in farming ~~require~~ <sup>show you are</sup> payed for such  
investment.

Answer on good farming & grazing lands.  
well handled will generally pay  
8 to 10 per cent. less repairs for fencing -  
And further this deponent doth not.  
M. D. Richmond

Frank Richmond another witness  
of lawful age being duly sworn deposes say,  
Question by Plaintiff Please state if  
you are acquainted with the James W Orr  
Mill property, if so what would be a fair  
cash value of said property divested of



the improvements put upon it by ~~him~~  
~~Or~~ since he purchased it.

Answer

I have been acquainted with said  
Property for Eighteen or Twenty years.  
I think that said Property was  
worth at the time J. W. Orr bought  
it, that is before the new mill  
mill-dam and Mill Machinery was  
put on it the sum of eight hundred  
dollars

Crop Examined -

If the property you speak of  
could have been sold in the  
market for \$1500. \$1800 or \$2000 -  
would you not in the way of trade  
have regarded it as worth that money?

Answer,

I would so regard it,

~~And further this deponent doth not,~~

Examination Resumed in Chief

Question

So you not mean to say  
that if the property had sold  
for \$1500 or \$1800. that it would  
only be worth that amount to  
the person ~~buying~~ selling

Answer,

If it changes hands several times  
at these figures. I would consider it  
worth that amount - but if only one sale  
had been made at the above price



I would not record that as establishing  
the price at the \$1500.- or \$1800.-  
And further this deponent soith not.  
Frank. Richmond

By consent of parties, on this 24th day of Feb.  
1883. at same place, M. M. Lyon another witness  
of lawful age, and being first duly sworn  
deposes and says.

Question by Plff. Are you the owner of mill  
property (Water grist mill) in Lee county Va,  
and if so how long have you been such owner?

Answer I am the owner of a water grist  
mill; and have owned and operated  
such a mill for Twenty odd years  
most of the time in Lee Co Va.

Question by same. Are you acquainted with the  
mill property know as the Orr mill, and were  
you acquainted with said property in Decr 1868,  
the time James W Orr purchased the same; and  
if so what do you consider would have been  
a fair price for said property at that time, in  
the condition it was then, ~~it~~

Answer I am acquainted with said property, and  
knew it in 1868, at the time Mr Orr  
purchased said property, and I do  
not think the property at that time



was worth more than six hundred dollars; at least I would not have been willing to have given more than that for it,

Question by same. - Have you recently purchased a mill site in this County for the purpose of erecting a mill thereon. If so please state at what price you purchased the same?

Answer. I have recently purchased a mill site, in the State of Tenn. near the Virginia <sup>and Lee County line</sup> line, for the purpose of erecting a mill thereon, for which I paid the sum of one hundred & fifty dollars, it contains about four acres, I think the water power, and location are much superior to the old mill site, I would not now give my late purchase, for the old mill site.

### Cross examined by Defts

Question You say you are the owner of a grist Mill in Lee County Va. You will please state what your mill yields you in toll annually, or the value of such tolls annually?

Answer. I suppose six or seven hundred dollars.

Question by same, Please state as near as you can what the erection of your mill, making of the dam &c cost you?



Answer. I Suppose about Two Thousand dollars.  
Are you a practical mill right? as well  
as mill owner?

Answer. I am;  
What do you regard the mill property  
of J. H. Orr in its present condition worth  
at this time?

Answer. I should think it was worth Twenty  
five-hundred dollars.  
If the mill will pay by its custom  
tolls say \$700. annually, would that  
not in your opinion increase its  
value?

Answer. In my opinion, mill property ought  
to pay 10 per cent over and above  
all expenses,

Examined, by Petff

Question by Plaintiff In your answer  
to one of the questions asked you by the Dfts  
you say  
That your mill yields six or seven hundred  
dollars in tolls, <sup>annually</sup> Now do you take anything  
out of this sum for the payment of a  
Miller - or the expenses of keeping up the  
machinery &c of your mill.

Answer. I mean that the six or seven hundred  
Witness claims dollars, are the gross receipts, of the mill,  
1 day 50 ct And further this deponent soiths not,

M M Lyon



The deposition of William Woodward  
taken pursuant to agreement, <sup>Feb 28 1883.</sup> which  
are intended to be read on behalf  
of the Plaintiff in a certain suit  
in Chancery, now pending in the  
Circuit Court of Lee County Va in  
which James W. Orr is Plaintiff  
and William S. Turner & others  
are defendants,

William Woodward a witness  
of lawful age being first duly  
sworn deposes as follows.

Question by the Plff. - Are you now the occupier  
of James W. Orr's mill, as miller, and if so how  
long have you been engaged in said mill as miller.

Answer I am engaged as Miller at Jas  
W. Orr's Mill, <sup>have been</sup> since Sept 6<sup>th</sup> or 7<sup>th</sup>  
1882.

Question by Same. - Have you during the time you  
have been engaged in said mill, kept an account  
of the tolls of said mill, and if so please state  
what they amount to.

Answer. I have kept an account of the tolls  
ever since I have been engaged at the  
mill. During the time I have had  
the mill in charge the mill has  
earned (222½) Two hundred and  
Twenty-two and one half bushels of wheat,



and eight, six and one half bushels  
of Corn

Question by same, - At the above rate, about what  
would the tolls amount to in one year?

Answer. According to my Calculation The Mill  
would earn four hundred and sixty  
bushels of wheat, and one hundred  
and eighty bushels of Corn, all  
would <sup>be</sup> worth \$550.00. Counting wheat  
at \$1.00 and Corn at 50 cents per  
bushel.

Question by same. - After deducting from the above  
sum \$550.00, the Miller's part, what sum would  
be left for the owner of the mill?

Answer The owner of the mill would have  
\$366.<sup>66</sup>/<sub>3</sub> after deducting  $\frac{1}{3}$  for the Miller,  
Crop Examined.

During the time of which you speak  
how much of the time have you been  
under repairs and did not work?

Answer. I Cannot tell exactly, but as near as  
I can remember I think the wheat mill  
has been stopped some six or eight  
days, and no other stoppages except for  
cutting loose the ice,

From your knowledge of the Country  
from which your customers come, would



not say that, numerous rains and high waters of the past winter have greatly interfered with your custom?

Answer. I expect the mill has lost some Custom, on account of high water; Then, taking that into consideration, and the fact that the next six months will fall in the spring and summer do you not regard it probable that the next six months will amount to more than the past six months?

Answer. I do not think it will; In the amount of, of tolls before mentioned before by you <sup>now</sup> include all the tolls received by you?

Answer. It does include the whole;

Question. What would you say the sweepings of the mill or miller including every thing not enumerated as tolls would be worth per month?

Answer. It would be worth something - but I cannot tell how much, as I have paid no attention to the amount;

Witness Claims And further this deponent saith that:  
1 day .50cts  
Paid by Plff. J. W. Woodward

Nancy J. Woodward another witness of lawful <sup>age</sup> being first duly sworn deposes as follows,



Question by Plff. - Has Phaela Turner wife of Wm L Turner had any conversation with you since the institution of this suit, in regard to a deed from James W Orr to her & her husband Wm L Turner, if so please state what she said in reference to said deed?

Answer. I was at the House of William L. Turner sometime since the institution of this Suite, and Mrs Turner said in my presence that she was expecting that Mr Orr would call for the deed and she knew if he did Mr Turner would give it to him, so she took it, and hid it,

Witness Claims And further this deponent soith not:  
1 day 50 cts Nancy J<sup>her</sup> Woodward  
Paid by Plff. <sup>inn</sup>

Virginia, Lee county, to wit.

The foregoing depositions of H. C. Banham M. D. Richmond, Frank Richmond & M. M. Lyon, <sup>Wm Woodward & Nancy Woodward</sup> were taken sworn to and subscribed before me, by consent of parties, at the times and places in the caption mentioned.

Given under my hand, Feb: 28<sup>th</sup> 1883.

Henry C. Forslyn J. P.



James W Orr.

vs 3 Depts

Wm L Lerner et als.

Filed March - 1883

J. A. Hyatt  
clerk

H. L. Bonham.

M. D. Richmond.

Frank Richmond.

M. M. Lyon.

Wm Woodward.

Nancy J Woodward.

Justice's fee \$4.50



The deposition of Wright Stickley and  
Andrew Pimmington, <sup>John R. Gibson</sup> taken pursuant  
to agreement, at the law Office of Rich-  
mond Duncan & Orr, on the 26<sup>th</sup> day  
of February 1888 before J. A. Skyles a  
commissioner in chancery which  
depositions are intended to be used as  
evidence in behalf of the Plaintiffs in  
a certain suit in chancery now pending  
in the Circuit Court of Lee County Va  
in which James H. Orr is Plaintiff and  
Wm. S. Turner & others are defendants.

Wright Stickley a witness of lawful age  
being duly sworn deposes & says,

Question by Plaintiff: Are you the owner  
of Mill property, in this County if so where  
is it situated, what is its character, and  
how long have you owned it.

Ans I am the owner of mill property  
situated about 9 miles west of  
Jarrsville, it is a water power  
consisting of Grist mill with  
three (3) sets of runners and I have  
owned the same about 9 years  
individually and previously.  
W. D. Richmond was a partner  
in said property with me for  
about 4 years



Question by same, Are you acquainted with the mill property and mill site now owned by James W Orr if so how long have you been acquainted with said property?

Ans

I am tolerably well acquainted with said property. I have known the property since about the year 1865. I was absent in Scott County for about 2 years during the years of 1867-8 & 9.

Question by same, What would <sup>you</sup> have regarded as a fair cash price for said mill site or mill property in 1868 that is without the new mill and mill <sup>& other improvements</sup> erected by James W Orr.

Ans,

I think it was worth about Six hundred (\$600) Dollars.

What a Crop Examination

What do you regard, the mill house and machinery on J. W Orrs lot now worth in its present condition?

Ans

I should suppose about \$700. If the mill and machinery as now <sup>is</sup> ~~is~~ will by its custom tolls make annually from \$600 to \$900, pricing said mill on business value as being worth what it will produce, what would you say on that supposition it would be worth?



Ans

I should think if it would earn that amount, <sup>in gross tolls.</sup> it would be worth from \$2500. to \$3750.

You say you have owned jointly and ~~and~~ individually for ~~13~~ <sup>your mill</sup> years, at that time, if the mill was then new, what has been about the cost of annual repairs since that time? Not estimating floods?

Ans.

I have been in possession of my property about 9 years, when I took charge of said property it was in fair repair, and my annual expenditures have been, <sup>as follows</sup> about \$75. dollars for the first year, which was expended for the completion of a stone dam which had been commenced, the remaining 8 years I don't think I have spent over \$5. annually for repairs, and the cargo &c of my mill are in tolerable repair, at present; last year I removed some wooden post and replaced the same with stone pillars at a cost of about \$40. —

In estimating a mill site, that is its



<sup>worth</sup>  
I want to ask you if this is not the correct model.

Say the mill, cost in machinery and construction, \$2000, and when thus constructed by actual, experiment the mill would earn by its tolls, an amount equal to a fair income on \$4000, that is above annual repairs, would you not say <sup>you</sup> on that basis the site would be worth also \$2000.

Ans I think not.

In the question above supposed what would you, say the site would be relatively worth?

Ans I think about \$500.

What per cent, over and above expense, do you, say a mill should pay on its investment to put it on equal terms with, other business of this country?

Ans I think it ought to pay above expenses 10 per cent.  
"Examined."

Question by Duff, In your estimate of the value of the Mill house and Mill Machinery of J W Orrs Mill which you fix at \$700, do you estimate the building



(5)

Ans

of the dam, and the costs of building said house and the mill machinery in it? I did not estimate the dam, but only the mill house & machinery.

Question by same. What would be the reasonable value of a wooden dam 8 ft high and 75 ft wide?

Ans

I cannot assume that; as I have but little or no experience in such work, as wooden dams.

Wit atten.

1 day 50¢  
by am

And further this witness saith not.

Wright Stickley

Andrew Pennington another witness of lawful age and being first duly sworn deposes and says.--

Question by Plaintiff. -- Are you the owner of mill property in this county, if so where is it situated, what kind of mill property is it, and how long have you owned it?

Ans

I am the owner of what is known as the Clifton mill property, situated on Trading Creek about five miles West of Jonesville; it is a water wrist mill, 2 sets runners, and saw mill, I have owned the same about seven years, in partnership with Edward M. Pennington.



Question by same. How many acres of land is then attached to said Mill site as purchased by you from the Cuytens.

Ans Eighty six acres, more or less is the way it is deeded to us, and I think that is about the number of acres.

Question by same. What was the condition of said Mill property at the time you purchased it?

Ans It was in tolerable fix, it was worn down considerably, I had to build a new house, plank across the dam, build a new fore-bay - which I did after running the same about 1 year & 2 or 3 months since that I have erected new machinery in the Lrist mill.

Question by same. ~~With the starting of work~~ did the old mill do, for the year and 2 or 3 months you run it before repairing it?

Ans It done tolerably fair work. Question by same. How you recently purchased O M Pennington's half interest in said property, if so what did you pay or agree to pay him for it?



(7)

Ans I have, and agreed to pay him \$600. on 1, 2 & 3 years time without interest.

Question by same, Are you acquainted with the James W Orr Mill property and Mill site, if so how long have you known it?

Ans I am well acquainted with said mill property, and have known the same ever since I was a boy and I am now 34 years old.

Question by same, What would <sup>you</sup> regard as a fair cash price for said Mill site in 1868 the year Mr Orr purchased it in the condition it was then in and before Mr Orr erected his new Mill Mill dam and Mill machinery?

Answer. I could not put it at over \$600.

### Cross Examined

What price did you & Edward Pennington pay to Clifters for your Mill?

Ans We paid them Twenty five hundred Dollars.

Was it not apparent at the time you purchased the Clifters Mill; that it was worn out & run down and must soon be rebuilt & repaired?



Ans It was in such condition, that it apparently would have to soon be repaired.

At the time, your purchase, was not the property chiefly, valuable as a mill site, outside of the land?

Ans The mill house, machinery and dam, I considered, as worth at the time we purchased, about \$300. or \$400 Dollars

What was the land reasonably worth as a farm not considering it as a part of the mill site - What is its worth as a farm simply?

Ans It was worth about \$300.  
~~would you not~~ What is the amt of the tolls of your mill, annually estimated in dollars?

Ans I reckon it will amount to about \$400, Gross receipts including the wit claim saw mill.

1 da. 50<sup>th</sup> paid by or. And further this deponent saith not.

A J Pennington

John R. Gibson another witness of lawful age after first being duly sworn deposes and says



Question by Plff. - At the time Mr C. L. Hamblen  
had you, <sup>as clerk,</sup> to record the deed from Wm L Lurner  
& wife to him for an interest in James W Orr's  
mill property, what did he direct you to do  
in regard to charging the fee for recording & tax.

Ans At that time he did not say  
any thing about said recording;  
Rec'd & Tax, but subsequently Mr. C. L.  
Hamblen came into my office, and  
I remarked to Mr Hamblen that I  
had charged said work to him  
and he informed me, as I under-  
stood, <sup>him</sup> that Mr. Lurner would  
pay me for said work, - I had  
been doing some other work for  
Wm L. Lurner under direction of  
Mr. Hamblen in the way of copying  
and while I had reference to the  
deed, I do not know which work  
Mr Hamblen referred to, that Lurner  
was to pay for. but I understood him  
as before stated; and I have since  
then charged the recording of said  
deed to Mr. Lurner.

Question by Same. - Is it or not customary for  
the vendee and not the vendor of lands, to pay  
the recording fee & tax of <sup>the</sup> deeds.

Ans It is, or that is the way I have understood it.



Cross Examined.

Did you ever show Mr Hamblin the fee bill or call his attention, to the charges after that in the conversation before alluded to?

Ans I did not.

When a moment ago, you mentioned for the first time in Mr Hamblin's presence that you had charged his uncle's fees to, Mr Turner, did Mr Hamblin's not say just then in your presence that you had mis understood him that he expected to pay said fees?

Ans He did so state.

Do you ~~or not~~ feel certain that at the time you said to Mr Hamblin that you had charged the fees to him Hamblin said that Hamblin said to you "Charge them to uncle Turner" that Mr Hamblin fully understood what deed you referred to.

Ans I can not say that he did, and my best impression is that the conversation before alluded to, took place at the time said Hamblin received some copies, which I suppose was intended to be filed in the Chcy Cause between Orr, & Turner et al.



which I had been copying.  
And further this witness saith not.

John R. Gibson

I took the acknowledgment of  
the deed referred to above, from  
Wm. L. Turner & wife to C. L. Hamblen  
as Court in Chcy, Mr. Hamblen  
assumed the payment of my fee  
in taking said acknowledgment  
and has since paid me for the  
same; and this statement, is agreed  
by the parties, to be taken as evidence  
for the defendants in this cause.  
Febr'y 26 1883. J. A. Hyatt

Virginia

Lee County to wit.

I, J. A. Hyatt Court, in  
Chcy for the County Court of the County  
aforesaid do hereby certify that  
the foregoing deposition was taken  
sworn to & subscribed before me at  
the time & place & for the purposes men-  
tioned in the caption Given under  
my hand this 26<sup>th</sup> February 1883.

John A. Hyatt Court



James W. Orr  
vs Depo.

Wm L. Lurnes et al

Filed Feby 26/1883.

J. A. Hyatt  
Clerk

Wright Stickley  
A. J. Pennington  
John R. Gibson  
J. A. Hyatt

Bill of Costs

Courts fee - - \$2.25-

Witness claims -

(copy)



The deposition of Joseph C Thomas, taken at the dwelling house of said Thomas, in Claiborne County Tennessee, on the 10 day of ~~March~~ <sup>February</sup> 1883, which deposition is intended to be read as evidence in a certain suit in Chancery now pending in the Circuit Court of Lee County Va. on behalf of the plaintiff, in which suit James W Orr is plaintiff and Wm L Turner & others are defendants, and which deposition is taken by consent of parties, without notice or commission.

The said Joseph C Thomas a witness of lawful age, and being first duly sworn, deposes & says.  
Question by Plff.

Are you acquainted with Wm L Turner, and did <sup>or not</sup> said Turner live in Claiborne County Tenn and in your, or this neighborhood, for some several years before the war, and did he <sup>or not</sup> remove from this neighborhood to Lee County Virginia during the war, and did he <sup>or not</sup> at the time of said removal, or afterwards, place his business matters here <sup>in Tenn.</sup> in charge of your father, Isaac Thomas deceased.

- Ans I am acquainted with Wm L Turner he lived about five miles from me before the war. and during the war he moved to Lee Co Va. I dont know of any business he put in my Father's hands except one note to collect on G. M. Bellingslip for \$8000



that note was signed over May the 5- 1866  
I see from the Atty's Receipt I was present  
at the time the note was signed over,

Question by Exam. — Have you or your father at  
any time since Decr. 12th 1868, paid, or sent, to  
said Wm L Lurmer, in Lee County Virginia, any  
money; and if so please state what amount, or  
amounts, and when paid or sent to said Lurmer,  
and from whom you received said money, and  
from what source; or on what account it was  
obtained, also state in what County and state  
the same was collected for said Lurmer, and who  
by. And by whom was the money or any part  
thereof conveyed to said Lurmer. And has said  
Lurmer any more money due him in the State  
of Tennessee of which you have any knowledge.



My Father had a note on Turner I think  
for five hundred dollars or perhaps over  
I do not recollect the exact amount. Father  
brought suit against Turners land and  
had it sold. The government then  
took possession of it and had it sold from  
him but finally after a good deal of trouble  
and expense Father recovered the land and  
got it in his possession and sold it I think  
for about his debt. This Billingsley note  
he put out for collection and there was  
some considerable amount that had been  
attached in Billingsleys hands and the  
court held the attachment good at any  
rate. When Father had collected all that  
he could on the note and paid all the  
cost and something from his trouble  
he told me to pay to Turner four  
hundred dollars. These are not  
facts of my own knowledge, but  
information from my Father.

January the 1<sup>st</sup> 1875 - I paid Turner  
\$100.00

September 17<sup>th</sup> 1875 - he sent me an order  
by W. S. Ely and I sent him or give to  
Ely \$100.00

on March the 8. 1880 W. S. Ely  
brought me another order from Turner  
for the balance coming to him and  
I sent him or give to Ely to take to  
Turner \$200.00 making in all the four  
hundred dollars that Father told me  
to pay him. Turner has nothing  
coming to him from this state  
that I know of. J. L. Thomas

State of Tennessee

Clackson County

I J. L. Ely do certify that  
the above deposition was taken at the time and  
place specified in the caption and committed  
to writing by the witness and that I sealed it up  
and put it in the Post office directed to the Clerk  
of the Circuit Court of Lee Co. with out being  
out of my possession or control J. L. Ely J. L.  
This March 10. 1883



James H. [unclear]

Recd

Wm. L. Turner et al

Paid by mail in [unclear]  
[unclear] of [unclear]  
March 21<sup>st</sup> 1885.

J. A. [unclear] [unclear]

Joseph [unclear] —

Wm. L. P. \$1.00  
[unclear] .50  
\$1.50

Bill of cost  
paid  
March 21<sup>st</sup>

J. J. [unclear] J. J.

\$1.00  
1.50  
2.50



James W. Orr

Def.

vs  
Wm. L. Turner et al

Plts

In Chancery

The deposition of A. R. Surgenor  
taken by consent of parties, at the  
Circuit Court Clerk's office on the  
27<sup>th</sup> day of February 1883, which is in-  
tended to be read as evidence for the  
Plaintiff in the above styled cause.

A. R. Surgenor a witness of lawful  
age being first duly sworn deposes & says.

Question by the Plaintiff. Did you ever  
have any conversation with Wm. L. Turner  
in reference to whether or not he had an  
interest in the Orr Mill property if so please  
state it giving all the particulars as far  
as you can now remember.

Answer. Some time not long after Mr.  
Turner commenced tending said mill  
I was indebted to said Turner <sup>for a few</sup> and I  
went to the mill. I asked him if he  
was a partner or had an interest in  
the mill. My recollection is that he  
told me he had none, but was just  
tending the mill in order to make  
or be doing something.



Crop examined by Defto.

Question by Defto. Mr. Surgeon you will please state whether or not W. L. Turner is in the habit of telling others about his business transactions or private matters.  
Answer as to that; I do not know.

1 wit claim  
50. Price  
by Orr. And further this witness saith not.

A. R. Surgeon

Nov 6th 1883.

By consent of parties, Robert Vanhuss another witness of lawful age, and being first duly sworn deposes, and says.

Question by plaintiff. - Did or not, you and your brother Elias Vanhuss, in the winter of 1875 and spring of 1876, build for James W. Orr on his mill lot, a new house, and if so what sum did said Orr pay you for said work?

Answer We did, and received for said work, the sum of Three hundred dollars, we done all the work on said house except the pointing and plastering. Mr. J. W. Orr paid us for doing said work,



Question by same. - After the new house was completed, Did or not your brother Elias Vankhus rent from the plaintiff the old house now occupied by Wm L Turner, about Feb' 1876, and occupy the same until sometime during <sup>the</sup> next fall?

Answer. My brother E. Vankhus did rent said house and part of the lot, but are reserving one half of said lot for his miller James Burnett,

Question by same. During the time your brother occupied said house and lot, where did Wm L Turner reside and what was he doing?

Answer. Mr Turner resided in Jonesville at that time, and I think in the house now occupied by Wm A. Orr, I don't remember exactly - but think he was keeping a little Confectionary store, at that time.

Question by same. During the time your brother so occupied said house was any repairs done to it, if so by whose direc.



tions were said repairs made and who paid for it, and what were said repairs?

Answer, The house was Covered, while my brother lived there - the work was done by Littleton Fleenor - but I do not know by whose direction the same was done, or who paid for it;

Institution by same Have you done any repairs to the Orr Mill if so by whose direction, and who paid you for said work.

Answer, I have done considerable repairing on said Mill, at different times in the last five or six years. which I did under employment by James W. Orr, and Mr Orr paid me for doing the said repairs. My Brother Elias Vinbush and myself built & furnished the material for building a granery on said Mill lot at the price of one hundred dollars said granery was erected under a contract



Made with us by James W. Orr -  
we were paid principally by the  
Store of Hamblen & Orr,

Crops examined

Question by Deft. Did Mr Orr during the time  
you and your brother built said Millers house on  
the hill give you any reason why he was  
building said new house, if so state what reason  
he gave.

Answer

If Mr Orr, ever gave me any reason  
for building the new house on the  
hill, I do not now remember it;

Question by same. Was not the grocery of  
which you speak paid for and built by Hamblen  
& Orr.

Answer.

As above stated, it was principally paid  
for <sup>goods out of the</sup> Store of  
by Hamblen & Orr, but I dont know  
whether they owned it together or not.

Question by same. If you know please state who  
has lived in and occupied the house Mr. L. Turner now  
lives in from the time your brother left it to the  
present time?

Answer.

Mr W. L. Turner, moved into the house  
in the Spring after my brother left it in the fall,  
~~as soon as my brother left it,~~ and  
has continued in it until the present  
time, It is my recollection that Mr W. L.  
Turner, lived in the house next after  
my brother left it, which was <sup>in the</sup> Spring of 1877.



Witness claims  
1 day 50 cents  
Paid by Plaintiff

And further this deponent doth not;  
H. W. Vashel

M B Rutherford another witness of lawful age being duly sworn deposes & says.

Question by Plaintiff. Please state whether or not at one time while Wm L Turner and Frank Wood were attending James W Orrs Mill as Millers. The said Turner directed you to take the "picks" of said Mill and repair them if so please state all he said about it?

Answer. I happened to be at Mr Orr's Mill, & was about starting off. When Mr Turner gathered up the picks, and told me to take them over to the shop and fix them, and charge them to Mr Orr, that Mr Orr would pay for them, that he had nothing to do with the mill only his part. That Frank Wood and himself were there as Millers, and were getting between them one third the tolls.

Question by same. Did you repair said picks as directed and if so who paid you for them?

Answer. I took the picks and repaired them, as directed by Mr Turner, and Mr Orr paid for the work;



Witness claims  
1 day 50 cts  
Paid by Plff.

And further this deponent saith Nat.  
M. B. <sup>this</sup> Retherford  
mark

James B. Browning another witness of  
lawful age being duly sworn deposes and  
says.

Question by same. Did you have a conver-  
sation with C. L. Hamblen since, C. B. Fle-  
enor was introduced and examined as a  
witness in this cause by the defendants  
relative to the objects which they the defend-  
ants had in introducing said witness, if  
so please state all that was said by said  
Hamblen to you on that occasion.

Answer

On the day that C. B. Fleenor gave his  
testimony, Mr. Hamblen took me  
one side and said to me, Mr. Browning  
we did not expect to impeach or injure  
your testimony. I would have testified  
the same as Mr. C. B. Fleenor did, in  
regard to <sup>your</sup> ~~my~~ character for truth and  
veracity, but said he wanted to place  
Mr. Orr, in his proper status before  
the Court; in handing that money to  
me, that he did not believe I intended  
to do any wrong.

Witness claims  
1 day 50 cts  
Paid by Plff.

And further this deponent saith Nat.

Jas. B. Browning



The foregoing deposition of A. R. Sargener  
was taken, sworn to and subscribed before  
me at the time and place, and for the purpose  
in the caption mentioned. Given under  
my hand, Feb 27th 1883.

J. A. S. Hyatt Comr  
in Chmney

The foregoing depositions of R. W. Vanhues,  
M. B. Rutherford & Jas. G. Browning were ta-  
ken, sworn to and subscribed before me at  
the time &c in the caption mentioned, by Consent  
of parties. Given under my hand. Mar 6th 1883.

H. C. Joslyn

J. P.

James W Orr

vs Dehaas

Jm L Lumen et al

Filed March 1883

J. A. S. Hyatt

Clerk

A. R. Sargener.

R. W. Vanhues.

M. B. Rutherford

Jas. G. Browning.

Justice" Jan 150



7  
The deposition of R. B. Vandewater,  
William H. Blakemore, Daniel B  
Martin and T. M. Eley.

Taken pursuant to agreement, at the  
Circuit Court Clerk's Office, on the 15<sup>th</sup>  
day of February 1883, which are in-  
tended to be read as evidence in  
behalf of Wm. L. Turner et al, in a  
certain Chancery suit now pending  
in the Circuit Court for Lee County  
in which James H. Orr is Plaintiff  
and said Turner & others are Defendants.

Robert B. Vandewater a witness of lawful  
age, after being duly sworn, deposes and says.  
Tested by Deft.

Are you a practical Miller, and  
if so, did you ever occupy a mill  
the mill of James Orr known as the  
Wagon Mill, and for what time and  
what years?



Ans. I am a practical miller and  
as such did occupy said mill  
about two years the two years  
succeeding Mr. Burnett - witness  
thinks he commenced in the Spring  
of 1877

Question, by Deft.

What was the toll of said mill,  
annually? That is how many bushels  
of grain was received, what proportion  
of Corn & what of wheat, and what  
<sup>was</sup> said grain worth at the mill on an  
average per bu:

Ans. I can not distinctly state the amount  
of said tolls - But my impressions  
are that the tolls of said mill  
would amount to from Six to  
Nine Hundred dollars annually,  
supposing said tolls to be sold at  
the market prices as received  
Burnett while acting as such miller, and



you conduct the same, by the Contract & direction of James H. Orr, or any other person?

Ans I rented and attended said mill under contract with James H. Orr, & worked by same.

While so conducting said mill for James H. Orr at any time, give you instructions to let H. L. Turner or his wife have grain & meal from said mill if I state all you know about such instructions by said Orr.

Ans About the time I commenced keeping said mill, I was applied to, for some supplies by said Turner, I then went to see Mr Orr about it, he told me to let Mr Turner have any thing he wanted from the mill, that was then I then suggested, I had better get a book in which to keep an account



Mr Orr said he supposed a piece of paper would do; and handed me some paper, on this I kept the account for a while, when the paper became lost, <sup>or destroyed</sup> and when so informed Mr Orr, who then said for me to tell Mr. Turner to keep the account himself, and I never heard any thing more concerning the matter: Under the before stated instructions from Mr. Orr I let Mr. Turner have such supplies as he called for.

Cross Examination.

Question Did J. W. Orr direct you at any time to let Mr. Turner have a one fourth part of the tolls of said Mill or any other stated portion of the toll

Ans He did not recollect of.

Question Did not other persons than



2  
(5-1)

Dr. Turner got grain at  
said Mill on account of  
some instructions either to  
you or them by J. W. Orr.

Ques. David Orr the father of J. W. Orr got  
some supplies at said Mill when  
formed me that J. W. David Orr was  
to keep the account of such as he rec'd,  
and I do not remember that any  
other persons got supplies under  
such an arrangement.

Question When said Mill was to be  
repaired (such repairing that  
you as Miller did not do.)  
who repaired and paid for  
it.

Ans. My understanding <sup>is</sup> that it was  
done under J. W. Orr's direction &  
paid for by him.

Question What do you think said Mill  
1868  
was worth in 1868 - or



what do you think it would  
have been worth before.

J. R. Orr put any  
improvements upon it.

Ques I think it was worth about  
\$1000.00

Reexamine

What do you estimate would be  
the cost of erecting, such a house  
+ the Machinery therein as is now upon  
said lot?

Ans About \$2000.00 I would think.  
If as you estimate the mill  
would cost \$2000. and the site  
\$1000. would, complete a mill  
the tolls of which amount to as  
as much as you say. Do you  
not regard \$1000 as a low price  
for the site?

The foregoing question is  
objected to because the same



is leading and because  
the defendants have not  
right contradict their own  
witness.

Mr A Orr in Reply

Ans I should think it would be  
low enough.

And further this defendant  
says to not.

R. B. Van der Kerk

Mr H B La Touche another witness of  
Caracas a ye being duly sworn deponent says  
question by Depy.

is your wife, and you by reason of  
your marriage with her, a part of  
the heirs at law of John Hysm  
deceased late of this County, and in  
his lifetime the owner of the site  
known now as Mrs. Mill?

Ans We are a part of such heirs  
my wife being a Hysm before  
marriage.



How long have you been acquainted with said Mill property - And what would you have regarded it as worth, in the year 1868, before Mr Orr constructed the present mill thereon, on a machine built say 10 years - Supposing a person desirous of such property?

Ans I have known said Mill property all my life, and I am now about 60 years old; and I consider that said Mill property was worth at least Two Thousand Dollars before Mr. Orr made any improvements thereon, in the division of the Hyam Estate. I considered the mill site with land attached as being worth as much as the three adjoining lots below it.

### Cross Examination

Question Has not the land & Mill property



spoken of by you partitioned by  
Commissioners appointed by a  
Court for that purpose - & if  
so into how many shares  
was it partitioned by them.

Answer It was: and was partitioned into  
five shares.

Question Is not the Mill lot one of those  
shares

Yes. It is.

Question What interest did your wife  
have in one of the shares?

Answer Our interest was 10 of one and  
fifth parts or  $\frac{1}{5}$  of the whole.

Question Was not your interest assigned  
you by said Commissioners in  
one of the three shares spoken  
of by you in your examination  
in Chief

Answer It was.

Question Did you sell your <sup>and your wife's</sup> interest



and if so what did you  
get for it

Ans We did, and received therefor \$66.<sup>00</sup>.

Question What did each of your  
Co-hires get for their one third  
interest in said share.

Ans I do not know exactly what they got  
but think they got a little less; A  
D. Wyman purchased two of the said  
three shares and a part of the third one  
and I am informed that what  
he purchased cost him about  
\$1500.<sup>00</sup>.

Question Did you ever own or occupy  
a grist mill.

Ans I have occupied one for a short  
time (but never owned one)  
which was a corn mill, when I  
was about 16 years old, for some  
months.

Question What do think the improvements



put on said property by  
J. W. Orr Cost-

Ans I would think it cost about \$1800.  
or \$2000.<sup>00</sup>

Question What do you think the  
property worth as it now  
stands.

Ans I think it is worth about \$400.<sup>00</sup>  
I might value such property higher  
than other persons.

Question What do you think said  
mill lot is worth leaving out  
the fact of a Mill site on  
location now?

Ans It is not worth more than \$400.<sup>00</sup>  
And further this deponent says  
that Wm. H. Blakemore

D. B. Martin are other witnesses of said  
age, being duly sworn deposed and says.

Tested by Deft.

See you are the heirs at law of  
the late John Hym over in his lifetime



of the property now known as On Mill.  
If so please state how long you  
have known said property - and  
what you regard as its market  
value on a credit of say 1 or  
2 years, in the year 1868, before  
there was put any improvement  
thereon.

Ans: My wife is, I having married a sister  
of the wife Mr. H. Stokemans and we have  
a life interest therein; I have known  
said property ever since I was a small  
boy and I am now about 63 years  
old; I remember that, at the time Mr.  
Orr bought said property, that it  
was worth \$1000.00

I and further this deponent sayeth not.

A B Martin



(13)

H. M. Elyan other witnesses of hundred  
age being duly sworn deposes and says.

The Plaintiff J. W. Orr is my  
second Cousin; the Defendant Chas.  
L. Hamblen is my first Cousin, and  
the Defendant Am. L. Turner married  
my Aunt; and therefore my  
Uncle by said marriage. I am  
now 56 Years old; and have known  
the mill site, where Mr. Orr's  
Mill is now situated ever since  
I was a boy. I know it, and was  
tolerably well acquainted with it  
in 1868, about the time the Plaintiff  
purchased it: — and my opinion is  
that at the time he purchased it, in  
the condition it then was, that it  
was worth, at that time, Two Thou-  
sand Dollars, I regard it as valua-  
ble property, and at one time I had  
thought of trying to buy it.



## Cross Examination

Question Did you ever own or deal in Mill property?

Ans I never did, nor was I ever a miller or the occupier of a mill.

Question Do you know of any Mill site sales in Lee County about the year 1868?

Ans I don't know of any, that I can now call to remembrance.

Question Did you apply to any one for the purpose of buying said property?

Ans - I don't know that I did, but I think probably I had some conversation with Wm. L. Turner concerning the purchase of said property.

Question Is your estimate of the value of said property based upon your own idea - or is based upon what Mill property would sell for?



Ans I might not have estimated the value of said property according to what other people might have estimated it, but upon what I estimated that it would have been worth to me, as don't know what other mill property has sold for.

Question Is you think that persons who have neither owned, occupied nor dealt in mill property are as good judges of the value of such property as men who have done so?

Ans I think not.

Remained in Chief

At the time Mr. Orr purchased the property in question, the prospective value of such property was better then than now, for the reason that other mills have been erected in



the neighborhood, which I think would  
likely take part of the custom, <sup>which</sup> that  
will would have been likely, to have  
increased.

Objections

The foregoing statement of the  
Customs is objected to because it is  
not matter in chief not brought  
out in any way by cross  
examination.

Ans. & for P.P.

Cross examination resumed.

Question

Has not the <sup>grain</sup> production of the  
Country and the population  
of the Country increased since  
1868?

Ans.

It has. The production  
of wheat has increased largely.  
Corn, I think has not increased.  
The population has increased.

And further this deponent  
says to me O.

A. M. Ely



Wm L. Currier et al  
adms. Depo.

James H. Carr

Filed Feby 16<sup>th</sup> 1883.

J. A. Hyatt  
Clerk

\* R. B. Vandeventer.  
Wm H. Blakemore.  
D. B. Martin.  
A. M. Ely.

Cours fee. - \$4.75  
witnesses - 2.00  
Shuff - 1.50  
\$8.25



1st

The deposition of Wm Elliott, C. B. Shaw,  
Charles F. Cook, & C. Williams  
and James Pererington  
taken at the clerk's office of the Circuit  
Court for Lee County, pursuant to a precept,  
on the 10<sup>th</sup> day of February 1883 which are  
intended to be read as evidence in behalf  
of Mrs L. Turner et al in a certain Chancery  
suit now pending in the Circuit Court of  
Lee County, in which said Turner et al  
are defendants and James W. Davis is  
Plaintiff.

Wm Elliott a witness of lawful age being,  
duly sworn deposes and says.

Question by defense.

How long have you been acquainted  
with mill site and property known  
as the Myers or ~~on~~ mill property?

Ans I have been acquainted <sup>with</sup> it thirty  
years or more.

What would you regard said mill  
site as worth, including the race.



~~and~~ race wheel - mill or dam  
but the race dug, say in the cir-  
culation ~~for~~ it was in when you  
purchased it, and fixing the price at  
that time -

Ans. I regard it one of the finest mill  
sites and water powers in the  
County, for the purpose of a  
mill - and I regard it as rea-  
sonably worth, on a credit of  
1 or 2 years, eighteen hundred  
or two thousand dollars.

Cross examined

Question by Plaintiff. Do you make  
your estimate of the value of said property  
as of the year 1868 or as of the present time

Ans. I estimated the value of said property  
as of the year 1868, or before the  
present mill was built thereon.

Question by same. Are you the owner  
of a Water Power Mill, or have you



ever had experience in the use or handling  
of Water Crest mill property?

Ans I am not the owner of a mill; I  
had some acquaintances when young  
with one or two millers.

Question by same What would you  
have considered the value of said property  
in 1868 for cash paid down

Ans I don't know that I would have  
made any great difference.

Question by same, Don't you think property  
in 1868 would have sold for a higher price in  
a credit of one or two years than it would for  
cash down?

Ans I suppose it would, probably the  
amount of the interest or thereabout.

Question by same, Have you known  
of the sale of any other mill sites in Lee  
County since 1865, if so what ones, and  
at what prices?

Ans I do not know that I have, as I  
have paid but little attention, however  
I remember that Colifton's boys sold a mill



site which had run down as to improve-  
ments, with about 30 acres of land  
attached, which sold for about the  
same price, but don't recollect the  
exact price.

mention by name. Was out there a Grist mill  
and Saw Mill an Olifson property both of  
which were running at the time of sale!

Ques - Not to do any good, and since  
the sale, the parties purchasing have  
rebuilt the property generally, using  
mostly new timbers in the dam,  
and further this deponent, with not.

his  
William X Elliott  
witness

C. B. Fleece an other witness of  
before being duly sworn deponent.

Ques - Were you present, at the taking of  
James G. Brown's deposition in this  
Cause at the dwelling house of A. L.  
Gibson?



Ques I was at the house of H. L. Friedman, on the day that said deposition was taken, but not there at the time of the taking of said deposition.

Ans After said deposition was taken, and on the same day, did you see James H. Orr the plaintiff in this cause pay the said Browning any money, if so how much, and <sup>what</sup> did the said Orr say it was for. State the whole conversation if any that occurred at that time.

Ans I was in Mr. Orr's Law Office, when on the same day, Mr. Orr and Dr. Browning was in a conversation concerning the cause in which said Browning had given a deposition, Mr. Orr took from his pocket a ten dollar green back bill and handed it to said Browning. Remarking that he had been thinking of paying him some money for some time that he was not satisfied with the way



a certain matter had been disposed of, that Orr, had caused the said Browning heretofore to pay some money, which he then thought he ought not to have done; and without understanding this conversation about the payment of the money to be in reference to an indictment made against said Browning for removing some rock off of said mill lot soon after the purchase of said mill lot by said Orr.

Mr. Orr remarked that he had not been satisfied about the matter and that the reason why he became angry at, and had the difficulty with said Browning was because he had been caused to do so through the influence and representations of the said Mrs. Turner; and just as Mr. Browning passed out of the door said Orr gave him 50 cents for his



attendance as a witness for him on that day, some thing was said about making a change in the deposition which said Browning had given on that day, but my recollection is not definite what was said or done concerning <sup>said change</sup> further than they said they would go down and change it, my recollection is that the 50 cents was paid after this conversation: —

At the time the conversation before alluded to took place, the said Browning had been drinking some, one could discern that he was under the influence of spirits slightly.

Cross examined

Question by Plaintiff. Did not Dr Browning propose to have his deposition corrected, if it was put down as Mr Orr told him it was written down by Judge Morgan?

A. I don't recollect, whether Mr Orr or Browning spoke of the change.



but I remember that they spoke of  
the mistake in the way the dep. was  
taken down, and I understood that  
it was this mistake they meant to correct.  
Question by same. You state in your examina-  
tion in chief that Mr Browning was some-  
what under the influence of a whisky, was  
he so much so as to render <sup>him</sup> unfit for the  
transaction of business intelligently?

Ans He was not.

Question by same. How long have you  
been acquainted with James B Browning  
are you acquainted with his general reputa-  
tion for honesty and integrity in the  
neighborhood in which he lives and how long  
have you been so?

Ans I have been acquainted with said J. B.  
Browning for about 18 years, I have  
lived within half mile of him during  
that time, I am well acquainted with  
his general reputation for honesty & integrity,  
and said reputation is good.



Question by same, Judging him by that general reputation do you believe him to be a man that could be bribed or in any way influenced by money to give false testimony?

The foregoing question is objected to because illegal and irrelevant.

Wm. J. P. & Co. v. P. & Co.

Ans I do not.

Question by same Are you acquainted with the general reputation of James L. Browning in the neighborhood in which he lives for truth and veracity? if so state what that character is?

Ans True; and it is good.

Question by same Judging him from that general character is he entitled to full credit on oath.

Ans He is.

Question by same, Are you acquainted with the property now known as the James W. Orr Mills property and were you at



guaranteed with it in 1868 at the time J. W.  
Orr purchased it.

Ques I am; and was at that time.  
Question by same, What do you think  
would have been a fair cash price for  
said property at the time said Orr bought  
it, in 1868.

Ans At that time I think it was  
worth \$780, or \$700. Dollars.

Question by same. At the time Orr paid  
the Ten dollars to Browning, did he not  
tell Browning that he had been thinking  
for some time about repaying said money  
to him?

Ans He said he had been thinking of  
so doing for some time.

Question by same. Did he not say in the  
same conversation that he had no  
doubt, but that he Browning at the time  
he removed the rocks thought he had a  
right so to do, under his contract with  
Mr. Myer.

Ans I think <sup>he</sup> did.



Question by same. Will you repeat all the conversation that occurred with reference to Turner causing the difficulty between said Browning & Orr, so nearly as you can recollect it. Not hitherto repeated by you?

Ans I repeated about all I recollected. Re-examined.

How far do you live from the said Orr Mill and have any knowledge which Mill his or Browning, Mill one mile above gets the greater custom?

Ans I live nearly 1 1/2 miles from Mr Orr's Mill, I can't say which Mill gets the greater custom. Are you a practical Miller and have you as such, occupied a mill if so where?

Ans I am - and attend Dr Brownings Mill, and have been nearly 5 years



What is the, tools & profits of said  
Browning's mill, with annually, es-  
timating, the grain at its market value?

The Plaintiff objects to the foregoing  
question and answer to as Dr Brown-  
ing's mill is not in controversy in this  
suit. Duncan

Att's Four Hundred, and may be  
as high as five hundred dollars.  
That so you estimate, the mill  
including improvements, to be worth  
on our account of one or two years.

Def's I think \$3500. would be a fair price.  
Do you estimate its value that it would  
cost more than \$1500 or \$2000. to build  
mill house & machinery not including  
the race?

Def's I consider the cost to build such  
a mill house & furnish such machinery  
would be about \$2000.

Then if the whole property would



he worth \$3500, and it would cost \$2000, to build the House & Machinery it would leave the site & place worth \$1500. would not, or according to your estimate what it then in that view be worth.

Ans I believe it would be nearly so. If a man able, to purchase such property, and desirous of doing so, was in search of such property what do you think such said site would sell for on a credit of one and two years that is its market value say 1868 on such terms.

Q I expect it would have sold for one thousand dollars.

And further this deponent saith not.

Charles B. Fleener

Charles F. Cook an aster writing after being duly sworn deposes and says.



(14)

Question by Defendant,

Are you acquainted with the Hymn  
or on mill property and if so how  
long have you known it?

Answer — I am, I have known said  
property ever since I have been  
old enough to know property  
of the sort that near Lewis.  
I am now 43 years of age —  
passed.

What would you regard as a fair  
price for said property, in the  
year 1868, in the condition it was  
then in — state your knowledge of  
said property then — and your reasons  
for having a price for said property  
fixed in your mind if you have  
a price or estimate thereof?

Ans — I believe it to be the most valuable  
property of that kind that I know  
of in the County, and some



where about the year 1868. I was  
desirous of purchasing property  
of that description, and I would  
regard said property, as being worth  
at that time, about two thou-  
sand dollars, without any mill  
or improvement, except the race,  
as it then was. I am a ~~carver~~  
by occupation and ~~water~~<sup>sculptor</sup> work  
power in connection with my  
business, and it was mainly for  
that purpose that I desired such  
a situation.

### Cross Examination.

Question Did you buy property near ~~St. Louis~~  
for the purpose of erecting a  
factory thereupon about the  
time James W. Orr bought  
the Mill property & if so at  
what price & on what terms  
and did you pay money



or in some other way?

Ans I don't remember as to time, it might have been a short time before or after such purchase by Mr. Orr. But I purchased a water power near Jonesville at the price of, I think \$800. or \$1000. for which, I paid in cash a short time thereafter.

Question What improvements were on the property you bought?

Ans An old saw mill, with a little patent grist mill attached, was on the property, which I considered worthless or nearly so. and a small staple & cabinet very good fence, which was of some value. I sold the old irons belonging to the old saw mill for about \$60.

Question Since you afterwards put valuable improvements on



said property, and if so at what cost?

Ans I improved said property by erecting a Sannery thereon at a cost of \$150. & have since planted out an orchard & made some other improvements to the unit of \$100. -

Question After you so improved said property, was not the same sold by C. J. Lumsden, Justice at the front door of the Court house of San County, to the highest bidder, for eight hundred and fifty dollars and a credit of One, two and three year time?

Ans It was.

Question And you the said defendant with

E. J. Hawk

A. C. Williams an other witness of lawful age being duly sworn depose and says -



Question by Defendant

Are you acquainted with the  
Hym or Ori Mill property, and  
if so what would you re-  
gard said property worth on  
a reasonable credit say in one  
or two years - with no improve-  
ments except the race; and with  
the improvements as they are;

Ans I ~~am~~ know the property, though  
not very well acquainted with  
it. I think the property as it is  
ought to be worth \$2500. or \$3000.  
and without the improvements I  
think it would reasonably be  
worth \$1000, \$1200 or \$1500, I am  
not sufficiently acquainted with  
the property or such property  
to form a definite value of such  
property.

And further this witness saith not.

H. Williams



James Ferrington an other witness  
of lawful age being duly sworn  
deposes and says.

Are you acquainted with the  
mill property known as the Orr  
or Hyam Mill, if so how long  
have you known it. And what  
would you regard as fair price  
for said property, in the year 1868  
the time it was purchased by Orr  
or, and before the new mill  
was built, on a credit of any  
one or two years?

Ans. I have known said mill property ever  
since I was a boy, and I am now  
about 58 years old. My knowledge  
is such as a man would derive  
from frequently passing by and  
attending said mill as a customer  
from what I know of said property  
I would consider it worth, at  
the time Mr. Orr purchased it  
on a credit of 1½ years at \$1800.



I regard it as the most valuable  
property of the kind in our County.

Q. or Examined

Question as Plaintiff. How you are  
dealt in mill property or water power, or  
had any experience as an owner of such  
property?

Ans I never have.

Question. by same. what difference would  
you make in your valuation of said <sup>Property</sup> in 1868  
on a credit of 1 & 2 years, and a sale for  
cash now,

Ans I would make a difference, equal  
to the interest.

And further this deponent saith not.

James <sup>Ship</sup> Peerington  
mark



The foregoing depositions of Wm Elliott,  
 C. B. Fleener, C. F. Bank, A. C.  
 Williams and James Pennington  
 were taken before me, subscribed  
 to by them in my presence and sworn  
 to by them respectively (except Fleener  
 who was sworn on a different day) on the  
 10<sup>th</sup> day of February 1883 at the place  
 and for the purposes mentioned in  
 Caption, given under my hand this  
 the day of 1883.

J. A. Hyatt Clerk.

Elliott . 50  
 C. B. Fleener 50  
 Williams 50  
 Pennington 50  
 2.00

Cost of Depo

4 wit claims - \$2.00

Court's fee 4.75  
 \$7.75-



Wm. L. Turner et al  
vs. recd. for debt  
James W. Orr

Filed & Hery - 1883

J. A. Hyatt, etc.

Wm. Elliott.  
C. B. Fleener.  
C. F. Lauck.  
A. C. Williams.  
James Pennington.

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Comptroller to Hyatt	14.75
Prints	2.00
Sheriff	.50
	<hr/>
	\$ 17.25



The deposition of Andrew Milbourn  
others taken at the Circuit Court  
Clerk's office on the 27<sup>th</sup> February 1883  
pursuant to agreement of the parties  
which are intended to be read as  
evidence in behalf of the defendants  
in a suit in Chancery now pending  
in Circuit Court of Lee County, in which  
James M. Orr is Plaintiff and Mrs. L.  
Turner & others are defendants.

Andrew Milbourn a witness of lawful  
age after first being duly sworn deposes  
and says.

Question by Defendant.

Please state how near you, live to  
the Hyman or Mill property; How  
long you have lived near it; and  
what would you have regarded  
the same as reasonably worth in  
1868, in the condition it was when  
Mr Orr purchased it?



I have lived ~~on~~<sup>on an</sup> adjoining farm to the old Wyom farm, about one half mile from the mill; and have lived there ever since the year 1857; and in the condition it was in the year 1868, at the time J. W. Orr bought it, I, at the time it was sold to Mr. Orr, regarded it as worth Two-thousand (2000) Dollars, and I still regard it as being still worth that amount at that time.

Goods Examined by Plaintiff  
Question Was not said property offered for sale to you at any time by Selis Wyom if so when was it and at what price was it offered you.

Ans It was but I cannot say at what time, but some time after the division of the Wyom Estate & before Mr. Orr purchased it; but no definite price was fixed or spoken of.



with Clary  
Jan 80

And further this witness saith not.

Andrew Milbourn

A. C. Eely an other witness of  
lawful age, after being duly sworn deposes  
and says.

Question by Deft.

Did Wm L. Turner, ever offer to  
sell to you the Hym Mill site, before  
he sold the same to James W. Orr if  
so upon what terms did he  
offer the same?

Ans Some time before the sale of said  
property to J. W. Orr, said Turner app-  
lied to me, and said he had purchased  
said mill site, and was unable to com-  
plete it, and wanted witness to go  
on and finish paying for said  
site; and move upon it and build  
a mill, saying that he was unable  
to do so, but that he had some  
debts in Linn, if he could collect



that he would keep some, that he was  
growing old; and that he wanted a  
support for himself & wife from the  
mill during his & his wife's life, and  
that if witness would finish paying  
for the site & build a mill thereon  
as before stated, that he Turner would  
at his & his wife's death, he ~~would~~ make  
witness his heir, witness states that  
said Turner remarked that said  
mill lot would cost about \$700.

<sup>vide</sup>  
but not say what amount he had  
paid towards said lot, or what  
amount was yet to be paid on said  
mill lot.

And further this witness saith not.

Arthur C. Ely.

Charles A. Russell an other witness  
of lawful age being first duly sworn  
deposes & says.



there you or not since the taking  
of your deposition in this case by  
the jury present at a settlement  
between Wm L. Turner, & C. L. Hamblin  
in reference to the account of said  
Turner due to Hamblin & Russell of So  
State all you know about it.

Answer. I was present when such a settlement  
was made. Said settlement was made  
this morning to wit, February 27<sup>th</sup> 1883,  
and, <sup>then</sup> ~~I filed herewith~~ <sup>as requested by defendant</sup> ~~these~~ receipts executed  
by said Turner to C. L. Hamblin as the  
result of said settlement, ~~said receipts~~  
were acknowledged by said Turner  
in my presence and I witnessed them  
at his & the said Hamblin's request. Said  
receipts are ~~marked~~ now before me &  
are marked on the back (1367) and  
C. L. Hamblin has transferred to his account  
the account embraced in said receipts  
as a loan to be due from said Turner.



Received of C. S. Hamblen one claim  
due me from mine for sale of Gold  
due me on the Orr mill property the  
sum of Twenty Six dollars & 52¢ the  
sum of my debt with Hamblen received  
this Feb 27 1883  
W L Turner  
Genl C. A. Russell

Received of C. S. Hamblen in settlement  
of 1000 lbs. due of mine & 50 per bus.  
& also the residue of 60 bus in the same  
mills is due me to be delivered from  
mine to mine this Feb 27 1883  
W L Turner  
Genl C. A. Russell

Received of C. S. Hamblen Twenty five  
dollars in cash as part payment of the  
balance of the Orr mill property  
this Feb 27 1883  
W L Turner  
Genl C. A. Russell



To { Receipt -

Hambler

"B. L. X"



to Hamblen & Russell and spoken of by  
me in my former deposition.

The receipts referred to by Mr.  
Russell and marked "B. L. 7,"  
is at the request of the deft. C.  
L. Hamblen attached to this depo.

J. A. Hyatt Comr.

And further this witness saith not

Charles A. Russell

Col. Wm. S. Martin an other witness  
of lawful age being first duly sworn  
deposes & says.

Question by Deft -

How near do you live to the Orr  
or Hyman Mill? How long have you  
lived there - How long have you  
known said property - And, what  
do you regard said property as  
being worth in the condition it was  
in 1868, when Mr. Orr purchased it?

Ans I live within  $\frac{1}{4}$  of a mile of said mill



and have so lived since Feb'y 1857:

In 1868, the time said Orr purchased said mill property my impression was and I thought it was worth Fifteen - Hundred dollars; I have always thought that it was <sup>one of</sup> the most favorable mill site in our County

Question by Sept -

~~Are~~ you or not acquainted with James Perminster, Albert S. Woodward, Andrew M. Ely and Andrew Mubane if so, were they men peculiarly able to have purchased mill property in 1868?

Obj. - ~~stated~~ to by Plaintiff because their ability or want of ability has nothing to do with the issues involved in this suit.

Answer for Plt

Ans as to Andrew M. Ely witness can not say; but as to the others he regards them as men being able to have made such purchase at that time.



Cross examined.

Question by Plaintiff. Did you not at one time negotiate for the purchase of said mill property, if so who with and at what time and at what price was it offered to you.

Ans I did, with Ales Wyman, I think in the year 1867 or 8, at the price of one thousand dollars.

Question by same. Do you know at what price Ales Wyman sold said property to Mrs L Lane and Mrs Siley Wyman.

Ans My impression is that it was \$1000. — I wrote the title bonds between the parties.

Question by same. Have you ever owned mill property, or had any experience in reference to the profits yielded by mills?

Ans I have not.

And further this witness saith not.

W. T. Martin



Wm. H. Woodard another witness being duly sworn  
deposes & says

Question by Dfts. Mr. Woodard you will please State how  
long you have been acquainted with the J. W. Orr  
property, were you acquainted with it in  
1868 and just before Mr. Orr purchased it and if  
so what do you think the property was reason-  
ably worth in the condition it was in when the  
J. W. Orr bought it?

Ans I have been acquainted with said  
property ever since I was a mill  
boy and I am now 53 years old  
I was also acquainted with it in 1868  
just before and about the time Mr.  
Orr purchased it; and in the  
condition it was then in, I consider  
it was reasonably worth Five thousand  
Dollars, this opinion is my own  
individual opinion as to the value of  
the property, I have had no practical  
experience with mills or mill property



## Cross Examined

Question by Plffs. Did you ever own a Mill site, Grist Mill & Saw Mill.

Ans I never did.

Question by same What would <sup>you</sup> regard as a fair cash price for said Mill property in the condition it is now in?

Ans I think, just as it stands to day, it is worth Four Thousand Dollars. And further this witness saith not.

W W Rodward

Febry, 28<sup>th</sup> 1883.

Andrew Milbourn a witness for the defendants being re introduced deposes & says.

Question by Defendants-

After you gave your deposition on yesterday, did you have a conversation with James H. Orr Plffs <sup>in this case</sup> concerning the purchase of his mill property, if so please state the conversation?

Ans I did have a conversation, with the



said James W. Orr, in which he remarked to me, "would you give me \$5000, for the property," to which I said that is very high, "he then asked me what I said to \$4000," to which I remarked that I was too old to buy.

~~And further this witness~~  
Cross Examined.

Question by Plaintiff. Did not the conversation between you and Mr Orr occur in this way, when Mr Orr met you, Did he not say "Well Andy while you are up so high on Mill property what do you say to \$5,000 for the whole."

Ans If that was the way he put his question I don't recollect it

Question by same Are you acquainted with the general reputation of James G Browning in the neighborhood in which he lives for honesty and integrity



and for truth and veracity.

Answer. I am; and said reputation is  
good, I never heard any thing to  
the contrary of it.

1001st claim  
1001st  
Ticket

And further this witness saith not.

Andrew Milbourn

The foregoing depositions of Andrew Milbourn, Ar-  
thur C Ely, Charles A Russell, Wm S Martin, & W. W.  
Woodward were taken before me at the times  
&c in caption mentioned by consent of parties.

Feb 28th 1883.

J. A. G. Hyatt Comr.  
in Chancery.



The deposition of Thomas H. Fleener  
taken by consent of parties, at the  
Circuit Court Clerk's Office on the  
3<sup>rd</sup> day of March 1883, which are intended  
to be read as evidence in behalf of the  
defendants in a certain Chancery cause  
now pending in the Circuit Court of Lee  
County, in which James H. Orr is Plaintiff  
and Wm. L. Turner et al. are defendants.  
Thos. H. Fleener a witness of lawful age  
being first duly sworn deposes and says.

Question by Defendant.

Please state, how long you have known  
James H. Orr, and how long has he the  
said Orr lived in Lee County and was  
he or not, Sheriff of Lee County in  
1868, and for some years before.

Ans. I have known the said James H. Orr  
ever since the year 1857. when I first  
knew him he was a boy living on Sugar  
Run about 2½ miles from his present residence.  
He was Sheriff of Lee County from the year  
1865. to some time in the year 1869.



Are you, acquainted with the house  
now occupied by Wm L. Turner, and  
ipostatate the style and no of rooms  
and size of the house - when said  
Turner moved into the same - and  
whether or not Wm O. did not have  
a new house built on said lot  
for his miller; and whether or not  
his miller did not once occupy the  
the Turner house & move out for  
said Turner to move in, after Wm.  
Turner quit merchandizing with  
Wm O. in Jonesville?

Ans I am acquainted with said house  
It is a log house consisting of two  
rooms, one below & one above with a  
small cook room attached; and is  
situated about 40 or 50 yards diagon-  
ally across the road from J. W. Orr's  
mill, and is a moderately comfortable  
house for a small family to live in,



My recollection is that said Turner moved into the house where he now lives, ~~soon~~ after the the new house built by Mr. Orr for his miller was completed, but I cannot say how long after the completion of the new house; but it was thus occupied by the said Turner immediately on his leaving Ipswich after he and Mr. Orr ceased being partners in the mercantile business. Mr. Burnett said Orr's miller lived in the house now occupied by said Turner while we were building the new house & said Burnett moved out of the old house, as soon as the new house was completed, in to the new; there is a tolerably fair garden spot of about  $\frac{1}{2}$  acre attached to the old house.



up to the time Mr. Orr built the new house, did or not, the Miller or Mr. Orr occupy the house now used by said Turner?

Ans I don't remember that any one except Mr. Burnett, as Miller, lived in said house.

Cross examined.

Q. After the building of the new house, of which you spoke, and Mr. Burnett had moved to it, did not Mr. Turner and family move from the old house and live in it until the winter of 1876.

Ans Mr. Vambuso moved into said house, he told me he had rented the house from Mr. Orr, and about that time he moved into said house, and remained there until the next fall, I think.

Q. When was the new house built, and do you know whether the plaintiff had it built for his miller or not.

Ans My recollection is that the new house was built in the spring of 1876. I don't know for what purpose it was built, I never heard Mr. Orr say



(57)

Q. by same. During the time Mr. Vanhus was occupying the old house as you have before stated, was not Mr. Lurmer then living in Jonesville?

A. Yes. I think he was.

Q. by same. Have not other persons than Mr. Orr's millers occupied said new house, and if so who?

A. Answer. They have. I remember one Mr. Gillis pie.

Q. by same. During the time Mr. Vanhus occupied the old house, was not a new roof put on said house by J. W. Orr?

A. Answer. There was a new roof put on said house. My understanding was that it was done by Mr. Orr.

Q. by same. At what price was the new house built?

A. Answer. I don't recollect.

And further this witness saith not.

Thomas W. Fleenor

The foregoing deposition of Thos W. Fleenor was taken subscribed & sworn to before me at the time & place in the caption mentioned, by consent of parties.  
Per 3rd 1883.

J. A. S. Hyatt comm.  
in chg.



Wm L. Turner et al  
ads  $\frac{2}{3}$  Depo.

James W. Orr

Taken before me as  
Comm. & filed March  
4<sup>th</sup> 1883.

J. A. S. Hyatt  
Clerk

Andrew Millhouse.

A. C. Ely.

Chas A Russell.

Wm S Martin.

W. W. Woodward.

Thos W Fleenor.

Sheriff  
Comm fee . . . . \$ 6.75<sup>80</sup>  
6 witness claims 3.00  
\$10.05<sup>-</sup>  
"



# THE COMMONWEALTH OF VIRGINIA.

To The Sheriff Of Lee County Greeting :

We Command You

*to Summon, Arthur C. C. Woodward, Andrew Helburn, Wm. S. Martin*

*and*

*a Court*

To appear before the Judge of our Circuit Court of Lee County, at the Courthouse on the *27<sup>th</sup>* day of *February*

Term next to testify and the truth to speak in behalf of *Wm. L. Surratt et al*

in certain matters of controversy pending in our said Court between

*James M. Orr*

PLAINTIFF and

*and*

*Surratt et al*

DEFENDANT. And this

*They*

shall in no wise omit under the

penalty of Twenty Dollars. And have then there this writ. Witness J. A. G. HYATT Clerk of our said Court at the Courthouse

This *23<sup>rd</sup>* day of *February* 188*3*, in the 10<sup>th</sup> year of the Commonwealth.

*J. A. G. Hyatt*  
Clerk.



James H. Cox  
log of the  
James H. Cox

James H. Cox

Exeuted  
The S. Edy. 1866



The deposition of John R. Gibson

taken by agreement at the law  
Office in Jonesville Va of Richmond  
Duncan & Orr on the 27<sup>th</sup> day of  
November 1882, which is intended  
to be read as evidence <sup>for Plaintiff</sup> in the  
Chancery Cause of James W. Orr  
vs Wm L. Turner et al, now pending  
in Circuit Court of Lee County  
John R. Gibson a witness of lawful  
age being duly sworn deposes & says.

Question by Plaintiffs Counsel. Will you  
please state whether or not you as clerk  
recorded the deed or paper purporting  
to be a deed given by W. Orr to Wm L. Turner <sup>Wife</sup>,  
if so please state who brought said deed  
to you for recordation,

Answer, I did. B. L. Hamblen brought the said  
deed to me, to be recorded.

Question by same. Please state what  
he said to you about it, when he brought it to  
you for recordation.

Answer. He said for me to record it and say  
nothing about it.

Cross Examined.

Are the deed books of your  
office open to public inspection



And did our Hamblin agree to  
you to conceal them or in any  
manner prevent their being suspected?

Answer. They are. Mr Hamblin did not  
ask me to conceal them nor prevent them  
from being suspected.

Is it not known to you that Mr  
Hamblin and Mr Orr have for several  
years past been partners in the  
mercantile business; and on  
terms of personal friendship  
and intimacy?

Answer. I know they conducted the Mercantile  
business together for some years on terms of  
personal friendship so far as I know.

And further this defendant saith not.

John R. Gibson

James H. Orr another witness of lawful age  
being duly sworn deposes and says.

Question by Plaintiff's counsel. Will you please  
state all about the contract between yourself  
and William L Turner, giving the whole  
matter in detail, as fully as you can?

The defendant, C. L. Hamblin, and  
Phebe E. Turner, object to Mr. Orr tes-  
tifying as to any contract made, by



craving him, in which Phebe Turner  
or C. L. Hamblin, as her assignee have  
an interest. Because, she is a  
married woman, and hence incompet-  
ent to testify upon her part or  
that of her husband.

2.ly. Because the Bill of the plaintiff  
admits and his Contract shows as  
stated by his rail bill and ex-  
hibit filed that the same (the contract)  
is in writing and hence <sup>evidence</sup> ~~proof~~ to  
alter Contract or change such Con-  
tract is not admissible.

Nov. 27/882.

A. L. Pickens

The further taking of the foregoing,  
deposition is postponed, by agreement,  
and the question, as to the competency  
of Mr. Orr as a witness, arising upon  
the foregoing objections by the Def'ts  
C. L. Hamblin + Phebe Turner, are respec-  
tfully referred, by like consent, to  
the Circuit Court for its decision  
at its next Term.

J. A. Hyatt  
Clerk.



The foregoing deposition of John R. Wilson  
was taken, subscribed and sworn to  
before me at the time and place and for  
the purpose mentioned in the caption  
given under my hand this 10<sup>th</sup>  
day of February 1883.

J. A. Wyatt Comr.

James W. Orr.

vs Depo of J. R. Wilson  
of v. & plat.

Wm. L. Turner et al.

Depo of W. Orr. - 1883

J. A. Wyatt

James W. Orr

1883



The depositions of A. P. Wynn

taken at the law office of Richmond, Duncan & Orr, in Jonesville Va. on the 5<sup>th</sup> day of Jan'y 1883, by consent of parties, which depositions are intended to be read <sup>in behalf of Plff.</sup> as evidence, in a certain suit in chancery now pending in the circuit court of Lee county Va. in which James W Orr is plaintiff and Wm L Turner et als are defendants.

A. P. Wynn a witness of lawful age being first duly sworn deposes as follows.

Questions  
by  
Plff

Did you purchase any of the shares in the land of John Wynn, decd. of which the full property ~~was~~ <sup>is</sup> one share, & if so what did you pay per share?

Answer,

I purchased two whole shares and seven tenths of another share of said land, I paid for one share five hundred dollars, for another share I paid four hundred and seventy-two dollars, and for the seven tenths I did not pay quite so much as for the other shares in proportion,

Q. Plff

What are the dates of your said several purchases — or about the dates?

Answer,

I think I purchased the two whole shares



in 1870, and the seven tenths were purchased at different times, some in 1870, and perhaps all were purchased in 1870.

2. Plff

Have these purchases made after the Commissioners partitioned the land?

Answer. They were;

And further this deponent ~~said~~ <sup>not</sup>.

What do you think the mill lot was worth in Decr 1868.

Answer. In my opinion the mill lot was worth fully as much as any of the other shares. I would rather have owned it than any of the other shares.

Do you think it was in fact more valuable than the other shares, and if so how much more was it worth?

Answer. I would have been willing to pay one hundred dollars more for that share, than for either that I bought.

**Verdict Examined.**

In your estimate of the value of land are you governed by your own value of the land, or do you estimate its value by what it would sell for on the market?

Answer. I make my estimate of the value of the property, by what I would be



1  
willing to give for it.

2. If then the mill lot would in 1868 or 69 have sold to persons desiring to erect mills or other machinery on said lot for say \$1500. would you not have regarded it as worth that to the holder of the lot?

Answer, If the property would have sold at \$1500, of course it would be worth that amount to the holder of the lot, or the party selling the same.

3. Do you know the price agreed to be paid for said lot, by Wm S. Turner & Mrs. Alec Hyman?

Answer I do not,

And further this deponent saith not.

A P Hyman

Alec Hyman another witness of law full age being duly sworn deposes & says. Question by Plaintiff. Did you and Wm S Turner purchase together or in partnership the mill property now owned by James H Orr and if so at what price was your purchase made?

Answer We bought the property together, and we were to pay one thousand dollars for it, Question by same. How much did you and Mr Turner pay towards said property?



and by whom was the same paid, and how much was paid by each of you?

Answer. I do not know how much Mr. Turner paid. I paid two hundred & thirty five dollars towards it.

Question by same. Was the money paid out by you on the purchase of said property paid back to you by any person if so by whom?

Answer. It was paid back to me by James W. Orr, at the time I sold out to Mr. Turner.

Question by same. Was this sum paid to you for Mr. Turner by Mr. Orr.

Answer. That was my understanding.

Question by same. Do you recollect the amount paid you by Mr. Orr for Mr. Turner, if so please state how much?

Answer. Mr. Orr paid me for Mr. Turner the sum of Two-hundred and eighty-two dollars, Mr. Orr paid a Judgment to Elkannah Flanory Admr. &c. of one hundred and eighty-two dollars principal, and a grey filly, at one hundred dollars, making the Two hundred & eighty-two dollars.

Question by same. Do you know the price which James W. Orr agreed to pay said Turner for said property?

Answer. I do not.

Question by same. How you had any



convention with said Turner since  
 the institution of this suit as to the price,  
 said Orr was to pay for said property, if  
 so please state what he claimed the price to be.  
 The answer to this question is objected to  
 so far as it relates to the interest of C.L.  
 Hamblin or Ophelia Turner his assigner?  
 Morgan & Priemore

Answer,

I have heard Mr Turner say that Mr Orr  
 would owe him fifteen hundred dollars,  
 he said Mr Orr was owing him about  
 Three Thousand dollars, and if he did  
 not get that, he would get fifteen-hundred  
 any way;

Did Turner say to you that if he failed in  
 this suit he would then sue <sup>said Orr</sup> him for fifteen  
 hundred dollars the purchase price, and  
 Orr was to pay him for the property or what  
<sup>did he say?</sup>  
 This question is excepted to because it  
 contradicts the deed of the plff. under  
 which he claims, and being in writing is  
 the highest & best evidence of the contract.

Morgan & Priemore

Answer,

Mr Turner told me, if he failed in this  
 suit, he would sue Mr Orr on the first  
 deed, and gain fifteen hundred dollars,  
 I mention by name, What was the condi-  
 tion of the mill on said property at



the time said Turner sold to said Orr.  
and what would have been a fair valuation  
of the tolls of said mill by the year in the  
condition said Mill was then in?

This question is objected to because, no  
such issue is raised by the bill or de-  
fendant's answer - and is therefore irrele-  
vant. Margaret Pickens

Answer. It was very much dilapidated, and I don't  
think there was any mill running ~~on~~ on  
the place at the time;

Cross Examined.

What price did Wm S. Turner agree  
to pay you for your half of said  
mill when you sold out to him  
and was that price paid?

Answer. I do not exactly remember, but I think  
it was five hundred dollars, but the  
deed I suppose states the proper price, I  
was to have five hundred dollars for my  
half and have what I had paid  
towards the land returned to me, which  
was paid to me by Mr Orr as I stated  
before in this deposition

Question. There is a condition in your deed  
to Wm S. Turner, by which you had the  
privilege within five years to pay back  
said money interest on which has just been



read to you. Did you afterwards  
sell that privilege out to Mr Orr the  
self; and if so how much did  
he pay you for that privilege?

Answer. I did sell that privilege to Mr Orr,  
and received the sum of two hundred  
dollars for the same.

Question. At the time Mr Turner purchased from  
you, at the price of seven hundred  
dollars would you have, sold  
that half interest, to Mr Orr for that  
price, or did you did you not  
so sell in part as a personal  
favor to Dr. Turner:

Answer. I sold to Mr <sup>Turner</sup> ~~Orr~~, because I could not  
pay, what I had agreed to pay, for the property;

Question. Was you advised at that time that  
said sale was for Mr. Orr;

Answer. I did not know it at the time,

Re-examined.

Question by Plaintiff. You state in answer  
to the first question asked you by test Price  
more that Mr Orr had paid back to you  
the sum which you had paid towards the pur-  
chase price of said Mill. property. Now is  
there anything still due to you on said  
property if so who owes it to you.

Answer. There is nothing due me on the property that



I know of:

\* Question by same, has anything been paid to you on said property by any one except what was paid you by J. H. Orr.

Answer, I do not remember of any one else paying me anything on the property.

Witness Claimed

1 day, 50 cts.

Paid by Plaintiff

And further this deponent doth not, Policy to ~~the~~ <sup>the</sup> ~~Wagon~~ <sup>Wagon</sup>  
Alexander B. Muncy, another witness of lawful age being first duly sworn deposes and Says.

Question by Plaintiff.

Are you the Commissioner of the Revenue for the Jonesville District and how long have you been so?

Answer I am, and have been acting as Comr. of the Revenue for ~~five~~ <sup>five</sup> years in said District.

Question by same. During that time did you as such Commissioner <sup>and as</sup> assist Mr. L. Turner for taxation.

Answer, I did, each year: for the last five years.

Question by same, Did the said Turner at any time request or require you to assess him with any real estate or interest in real estate either for life or in fee.

Answer, He did not;



9.

Question by same. Did the said Turner at any time since you have been Commissioner of the Revenue give into you for taxation any debts monies claims or demands of any kind on hand or owing to him in anyway, or from any person, and especially did he give into you any claim for any debt or demand against James W. Orr?

Answer.

He did not;

Question by same. Who was Treasurer of Lu County from 1875 to 1879, or 1880,

Answer,

Charles L. Harbless;

Question by same Did Phoebe Turner wife of the said Wm L Turner. give into you for taxation any real estate or interest in real estate, situated in said County, or did she give into you, for that purpose any debts demands claims or monies on hand or anything of the kind or owing to her in anyway

Answer.

She did not; I did not assess her at all nor did I ever apply to her for a list of property.

Question by same. Was there any real estate or interest in real estate charged to Wm L Turner or Wm L Turner & wife



or either of them are the land books of your District since you have been acting as Commissioner in said District.

Answer. This question is objected to because the books are the best evidence of such entries.

Morgan & Prudenore

Answer. There was none, that I remember of.

And further this deponent doth not.

Alex B. Mursey

The further taking of depositions in this Cause is adjourned until to-morrow Jan 6<sup>th</sup> 1883, at the same place, This January 5<sup>th</sup> 1883.

Henry C. Joslyn J.P.

Met pursuant to adjournment, on the 6<sup>th</sup> day of January 1883, and John Burgan a witness of lawful age being duly sworn deposes and say,

In answer by Plaintiff, Did you ever hear Wm L Turner say whether or not he owned any interest in the J H Orr Mill property (now in dispute, in this suit) and if so when was it, where was it and what did he say?

This question is objected to so far as the same affects C. L. Hamblin or Phoebe Turner.

Morgan & Prudenore



Ans. Some time in the year 1879, at the dwelling house of Wm L. Turner near said Mill, a conversation arose between witness and said Turner, in which said Turner remarked about Mrs Hymn then in her yard in sight in which said Turner remarked - "Look there at the old fool, there she is in suffering; she had an interest in this mill once that would have supported her; to which witness said or you have an interest in the Mill have you not?" to which said Turner replied no more than you have.

### Cross Examined -

Question. How did you happen to know that Dr. Turner had an interest in the mill which caused you to make the remark

Answered. I had heard it talked about and my recollection is that John Hambley for one told me that Mr Turner had an interest in said Mill

Question. For how long have you been acquainted with Wm L. Turner and have you seen him often for the last say 10 years?



Answer. I have been acquainted with him for about 10 years and have seen him frequently during that period. I did the principal part of my Mill<sup>at</sup> the Orr Mill while Dr Turner was Miller there.

Question. Did you on any other occasion, have any other conversation with said Turner about said Mill?

Answer. Not that I now recollect

Question. Was it in the winter, spring, summer or fall?

Answer. It was in the summer or latter part of the summer.

Question. Who else was present?

Answer. No other person was present

As Dr Turner is well known you, will you please state if he is in the habit of using such language as "old fool" about ladies in the neighborhood?

Answer. I never heard him use it but that one time

Question. Is not Dr. Turner a chaste man generally in his language, and did ever <sup>you</sup> hear him use such language at another time during your acquaintance, about any other person?

Answer. As far as I know he is a very smooth man in his language. and I do not



know that I ever heard him use such an expression about any person at any other time

Question—was you & Dr Turner sitting down at the house or was you upon your horse in the road?

Answer He was both sitting down together at the back of Turner's house.

Question—What was your business at Turner's house on that occasion?

Answer I had been over to old Johnny Woodhams on Sugar run came by the mill on my way home. When Mr Turner asked me to get down and rest awhile which I did staying with him an hour or more.

Question—Please state what else you and Dr Turner talked about during your stay at that time?

Answer—He talked about one thing or another. I do not know that I recollect any particular thing that we talked about.

Question—Can you not recollect some few words or sentences that passed, about something besides the mill?

Answer No I can't

Question—What had you been over to wood-  
work for?

Answer I don't know that I went for anything except to see the old man



Question. What time in the week was it?

Answer. It was on Sunday.

Question. What time in the day?

Answer. It was after 12 o'clock. I had not  
in my dinner at the old Man Woodards.

Question. Did this conversation you relate  
about the mill take place when you  
first got down or was it after you  
had been there for some time?

Answer. It took place after I had been  
there a right smart little while.

Question. On which side of the house were you  
sitting?

Answer. We were sitting on the East side  
of the house.

Question. Have you met at different times in  
this country and since 1879, said to  
C. L. Hamblin in conversation with  
him, that it was your belief or  
opinion that Dr. Turner had an  
interest in said mill?

Answer. I believe I have.

Question. If you had heard Dr. Turner say  
the facts you detail - How did it  
happen that you used that language  
to Hamblin?

Answer. As a great many men were getting



the mill because they did not like said  
Turner. I thought he must have some  
interest in the Mill or Orr would turn  
him out, and this is what caused me  
to talk that way, what ~~Turner~~ had  
said to me did not make much impres-  
sion on me.

Question - If I understand you then, you inferred  
that Dr. Turner did not make claim  
to any interest, he might have, lest  
it might affect the custom at the mill  
as he Turner was unpopular as a  
Miller:

Answer, That was my inference - from the  
conversation first detailed by me.

Re Examined

Question by Plaintiff How did you  
come to talk to C L Hamblen about the mill  
and about Turner having an interest in it?

Answer I don't remember how the conversation  
came up,

Question by same Did you tell C L  
Hamblen that Turner told you he had  
no interest in said mill.

This question is objected to because it is  
hearsay & irrelevant? Margaret Pickmore

Answer I do not remember telling C. L. Hamblen  
that Turner told me he had no interest



in the mill - but I do remember  
telling John Hamblen that Turner  
told me so,

Question by same. How did these con-  
versations between yourself and C L  
Hamblen come up.

Answer I do not recollect;

Question by same In these conver-  
sations did said Hamblen express any  
opinion as to whether said Turner had  
an interest in the mill or not?

Answer I do not remember.

Witness claims And further this deponent saith not,  
1 day : 50<sup>pts</sup> John M. <sup>this</sup> ~~X~~ Burgin  
<sub>work</sub>

The taking of depositions in this cause  
is this day resumed by consent. This 8<sup>th</sup>  
day of February 1883, when C. C. Bell  
a witness of lawful age being duly sworn  
deposes and says.

Question by The Plaintiff. Will <sup>you</sup> please  
state if you have had any conversation  
since the institution of this suit with C L  
Hamblen, in reference to the claim of  
Wm L Turner, in the mill property of James  
W Orr, if so please state what he said  
about said claim, its amount or, Tell all  
he said about it?



witness claims  
1 day of \$50

Answer. About a month, or perhaps a little more than a month ago. C. L. Hamblen and myself were talking about this Suite, and he told me that Mr Turner's claim against Mr Orr would be between four and five thousand dollars - back tolls and everything - he also said that it would be very hard on Mr Orr. I asked Mr Hamblen if Mr Turner had not been getting his living at the mill, he told me that he had gotten a portion of his living at the mill - but had made some corn on land near him, and that Mr Turner and Jim (a colored boy living with him) had been working there.

And further this deponent doth not

C. E. Bell

C. A Russell another witness of lawful age being duly sworn deposes and says,  
Question by Plaintiff. Are you a partner with C. L. Hamblen in the mercantile business at Jonesville, if so how long have you been so.

Answer. I am, and have been a partner of C. L. Hamblen, since March 1881.  
Question by same. Were you and the said Hamblen in the habit of having your grinding of wheat for your mercantile



business done at Orr's Mill, and did you not some time ago complain to Mr Orr about the unsatisfactory character of the grinding done for you if so please state about how long ago that was.

Answer,

We were in the habit of having considerable of our wheat ground at Orr's mill, and about a year or perhaps little more than a year ago, I did complain to Mr Orr and to Mr Turner about the unsatisfactory manner in which our wheat was ground and of the quality and quantity of flour we received from this mill.

Question by same. In any of these conversations with Mr Orr, do you recollect hearing Mr Hamblen ask Mr Orr if Mr L Turner had an interest in said Mill, if so please state the answer of the said Orr to the said Hamblen?

Answer

I do not remember of hearing Mr Hamblen and Mr Orr talk about it,

Question by same. Has Mr L Hamblen paid Mr Turner <sup>or wife</sup> any goods wares and merchandise on the purchase which he claims to have made of them of their interest in said Mill property, out of the share of



Hamblen & Russell. since the assignment  
or transfer of said property <sup>or claim</sup> to the said  
Hamblen?

Answer. He has not that I know of, and I think  
I would have known it if he had,  
Mr Turner has been running an account  
with Hamblen & Russell ever since we  
have been in business. The last time  
we settled he settled with me, and  
paid his account in Cash and other  
things - he has made no settlement  
for the last several months

### Croft Examined.

Does Mr Hamblen act as a clerk  
in the store, of Hamblen & Russell  
and as such recd, and deliver  
goods to customers?

Answer. He does;

Ques? Could, He not therefore, have made  
such sales to Dr Turner, agreed to  
settle & account for Dr. Turner over  
due account to Hamblen & Russell  
without your knowledge of that  
fact?

Answer. He could have agreed to have done so,  
but no such settlement has been made  
to my knowledge, Mr Turner still owes  
the firm an account of about Twenty



four dollars and eighty-two cents.  
Does Mr Hamblin keep an account with  
the firm and lift merchandise on his  
own account?

Answer. He does;

Is Mr Hamblin a man of any  
means, outside the firm and could  
easily pay from other sources say  
five or six hundred dollars?

Answer. He is a man of some means outside  
of the firm, and I think could pay  
several hundred dollars without  
calling on the firm.

Since the date of the institution of this  
suit say October last, has Dr Wm L. Turner  
been frequently at Mr. Hamblin and  
have you any knowledge of said  
Hamblin having <sup>at said time</sup> corn or other farm  
products?

Answer. He has been at the store <sup>and Mr Hamblin's house</sup> frequently, but  
I have no knowledge of any transaction  
of the kind.

**Examination**

Question by Plaintiff, You have stated  
that you made the last settlement with Wm L  
Turner which he has made, with the firm of  
Hamblin & Russell, will you now state



the date of said Settlement.

Answer. It was September 14<sup>th</sup> 1882,

Question by same, Has C L Hambleton any other store or interest in any other store than that of Hambleton & Russell.

Answer. Not that I know of;

Question by same, Did you not clerk for Hambleton & Orr for sometime in their store in Jonesville while they were partners in the Mercantile business, and if so did the said Hambleton & Orr use a house which is situated on said Mill property as a granary during any of that time.

Answer. I did clerk for Hambleton & Orr, and during that time I heard them speak of having such a granary. I heard them say they had grain in it.

Question by same, I her now exhibit to you a paper marked (O.P.2), purporting to be a contract, between James W Orr and C L Hambleton with reference to building a granary on the Mill property, Will you please state in whose hand writings the names to said agreement are.

Answer.

The paper here referred to and the above question is objected to as irrelevant to any issue in said case.

Morgan R. P. R. R.



Answer.

One is in James W. Orr's hand writing and the other is in Charles L. Hamblen's hand writing as I believe

Witness Claimed  
1 day .50

And further this deponent soith out,

Charles A. Russell

Elbert S Woodard, another witness of law-  
ful age, and being first duly sworn deposes  
and says

Question by Plaintiffs. Did you ~~attempt~~  
attempt to purchase, from Wm L Turner  
the Mill property, or did he attempt to sell  
the same to you at any time before he  
sold the same to James W Orr.

Answer.

There was Considerable Talk between  
myself and Mr Turner in regard to  
a sale by him to me of the Mill property,  
before he sold the same to James W Orr.  
Question by same. At what price did he  
offer said property to you?

Answer.

My recollection is that he asked me  
one thousand dollars for the property-  
but he reserved the use of the House  
where he then lived, and where he now  
lives, with the inclosure around it,  
during his lifetime and the lifetime  
of his wife, I understood this to be  
a proposition for the whole property and  
not for one half thereof.



Question by same, Did he propose to reserve any interest in the mill or the tolls thereof?

Answer. Not that I have any recollection of,

Question by same. Have you had any conversation with said Turner since the institution of this suit about the amount of his claim against James H Orr, or the value of said claim, if so what did he say said claim amounted to or was worth?

Answer. Mr Turner and myself have had a conversation about the amount of his claim against J. H. Orr, Mr Turner and myself made a calculation of the amount that one fourth of the toll ought to amount to, and also the use of the house and lot, and we made the whole amount to somewhere between Twenty-five hundred and four thousand dollars.

The foregoing, question ~~and answers are~~ ~~excepted to~~, be was objected to, and is now objected to as well as the answer thereto because at the date fixed for the conversation was after the assignment to C. L. Hamblin and so far as he is involved they are each excepted to Morgan & Pridemore



Cross Examined.

In the ~~compensation~~, alluded to you as  
had with Dr. Turner since the institution  
of this suit, will you please state all  
that Dr. Turner said in that conversation.

Answer,

The Plaintiff by his attorney objects  
to the witness stating anything stated by  
said Turner in said conversation  
in reference to anything else except the  
amount or value of said claim.

Duncan.

Answer,

The conversation before forth detailed  
by me occurred in this way, Mr Turner  
whose wife is an aunt of mine, come  
to my house when we were gathering  
apples in the fall of last year, and  
had not been there long, when the  
conversation turned upon the suit  
between Mr Turner and Mr Orr  
about the mill, he took from  
his pocket a paper which he called  
a deed, and read it, which paper  
was read, and seemed to call for  
one fourth of the tolls from the  
mill, said paper was very dim  
and the said Turner told me it  
had been lost for sometime but  
had been recently found by his wife,



He said he Turner did not know  
 where the paper was - but his wife  
 had found it. There was something  
 said in the deed, about the consideration  
 mentioned in the deed of five hundred  
 dollars, - but Turner said the deed  
 was executed to him by Orr, in  
 pursuance of the agreement between  
 him and Orr, that when he executed  
 the deed to Orr for the mill  
 property, Orr was to execute this  
 deed which was then before us.  
 and the deed Turner executed to  
 Orr was the reason of Orr's  
 executing this deed, and the money  
 which he Turner had promised  
 to Orr was not to pay for his  
 deed - but was promised to Orr  
 in case he could collect some debts  
 in Tenn., or get it otherwise -  
 but the money thus promised was  
 only as an accommodation and loan,  
 and he could not collect said money  
 and consequently did not let Mr  
 Orr, have it, he said he did  
 have debts due him in Tenn. - but  
 did not care to say much about it, he  
 having left there during the war,



In the said conversation, Mr Turner spoke of some small amounts he had paid towards repairing the mill and also of fitting up a house on said lot for a storehouse, with a view of occupying it as a storehouse but Mr Orr asked him to write a few days and subsequently told him he had declined to let him have it. The reason Mr Turner said he wanted the house for a storehouse, was that he was out of <sup>the mill</sup> ~~business~~ after being shut out of employment, and so told Mr Orr, and in this same conversation Mr Turner told me he had sold out to C. L. Hambley.

Ques. Do you remember of anything further in this same conversation relating to the matters in regard to said mill, as spoken of by you in your examination in chief?

Answer I do not, except he said he had received something near a year's support from said mill,

Questa In the first conversation detailed by you, was you stipulating, with a view to purchase, or was it a mere conversation in reference to said property?

Answer, I was in earnest, and wanted to purchase the property



Question Can you give us any reason why you did not so purchase? or was it on account of the highness of its price?

Answer, It was not on account of the price that I did not purchase it. for I considered the property worth all he asked for it;

Question. Was you a resident of this County in the year 1868 & 9 and on to the present time? And if so what was the relative market value of real estate, then and since the year 1873.

Answer, I was a resident of the County in 1868 & 9. and have been a resident of the County ever since. I think real estate at the present time is worth fully as much as it was in 1868 & 9.

Question - What would you regard, the mill seat and water power of the company on "mill property" <sup>the works</sup> without any mill upon it considering its location &c - The sale to be upon any 1 or 2 years credit?

Answer, I should think it would worth at least fifteen hundred dollars, - for the property without the mill, or dam or anything on it, only what was on it when I proposed to purchase it,



And further this deponent doith not;

E S Woodward

Virginia Lee County To wit:

I H. C. Foslyn a Justice of the Peace  
for the County of Lee and State  
of Virginia, do Certify, that the fore-  
going depositions of A. P. Wynn, Ailey  
S. Wynn, Alex B. Muncy, John M. Burgin  
C. C. Bell, Charles S. Russell and Albert  
S. Woodward were taken subscribed  
and sworn to before me at the  
times and place in the captions  
mentioned.

Given under my hand this 8<sup>th</sup> day  
of February 1883

Henry C. Foslyn J. P.

L. H. Orr  
vs. 3 Deps.  
Wm L Turner et als

Subscribed February 10<sup>th</sup> 1883  
J. P. Foslyn

A. P. Wynn  
Ailey S. Hurst  
A B Muncy  
J M Burgin  
C. C. Bell  
C. A Russell  
E. S. Woodward

Justice Fee 7.00  
Witnesses 1.00

H. C. Foslyn J. P.



pt  
11

The deposition of Frank Wood taken at the law office of Richmond Duncan & Orr in the town of Jonesville, on the 16<sup>th</sup> day of November 1882, pursuant to notice hereto attached, before the undersigned John A G Hyatt a Commissioner in Chancery, which deposition is intended to be read as evidence in behalf of the Plaintiff in a suit in Chancery now pending in the Circuit Court of Lee County Virginia in which James H. Orr is plaintiff and W<sup>m</sup> L Turner & others are defendants.

Present. James H Orr. Plaintiff & C. T. Duncan one of his counsel, and W<sup>m</sup> L Turner & C L Hamblen two of the defendants and A L Pridemore their counsel.

Frank Wood a witness of lawful age being duly sworn deposes, & says,

Question by Plaintiff's Counsel Did you work for and assist, W<sup>m</sup> L Turner in the Mill during any part of the time said Turner had rented the Mill of James H Orr  
If so please state how long you so remained with him if it was nearly as you can when you commenced and when you quit?  
Answer - I stayed with Mr. W<sup>m</sup> L. Turner and worked for him in the said Mill from the 10<sup>th</sup> day of February 1879, until



about 1<sup>st</sup> day of November 1881.  
Question by same. Did you work for  
a part of the tolls of the Mill, if so what  
part were you to get?

Answer - I worked for a part of the  
toll and received one sixth part  
thereof for my services.

Question by same. Did you keep an  
account of the tolls so received by you  
for the first year you remained in the  
mill ~~for the first year you staid in the~~  
~~mill~~ with Mr Turner? and if so what amounts  
came to your part?

Answer. I did - and I received as  
my part  $103\frac{3}{4}$  Bu wheat, and about  
53 Bushels of corn.

Question by same. How did this year  
correspond or compare with the remain-  
der of the time you staid there in way of tolls?

Answer. I don't think the custom  
to the mill was quite so large, after  
the first year, for the remainder of  
the time I staid in the mill.

Question by same. Do you know un-  
der what contract Mr Turner had the  
mill rented, I mean did he rent for  
a part of the tolls if so, what part did  
he get?



Answer - Mr. Turner was to receive  $\frac{1}{3}$  of the tolls, as he informed me being the same terms upon which Mr. Burnet had, had the mill rented, and that Mr. Orr was to keep the mill in good repair. Question by same. Was the account you kept, kept by direction of Mr. Turner or did you merely keep it for your own information.

Answer - I kept said account for my own benefit.

Question by same. Do you know whether Mr. Turner kept any account of the tolls during the time you staid with him?

Answer - He did - during the first year - and I don't think he did afterwards.

Question by same. During the time you stayed with Mr. Turner in the mill did you ever hear him set up any claim to said mill property or any interest in it?

Answer - I never heard him say that he did or did not have such claim.

Question by same. When any repairing was necessary to the mill who had it done?



Answer - When any thing of consequence got out of order, Mr Turner would go after Mr. Orr, who would get up hands and have the work done but I don't know who done the paying.

Question by same. Did or did not you and Mr Turner rent from Mr Orr the granary standing on said Mill property for a store house -

Answer - Mr. Turner rented said granary - I had nothing to do with the said renting. He & I were partners or expected to be, & he informed me that he was to have said granary (for repairing the same) for one year.

Cross Examined by Defts counsel Was you employed, by Mr Turner, alone, or was it not a condition of his occupancy of the mill, that you was to remain in the mill is practical miller?

Answer - No it was not. Mr. Turner rented the Mill and afterwards employed me.

Question 2. Is Mr Turner a practical miller?

Answer - I don't think he was when we commenced business at said Mill.



(5)  
How long, have you been engaged, in and about, said Mill; or been acquainted with, the same;

Answer— For about 3 years I was in said Mill with James B. Burnett, which was before Robt Vandeventer occupied the said Mill.

Question— During the time, Burnett and yourself occupied said Mill, was not the custom work done at it, much greater than after the year 1859?

Answer— I think that the custom work was greater.

And further this deponent says to not.

James H. Wood

November the 18<sup>th</sup> 1882 Met pursuant to agreement at A L Pridemore's Office when James G Browning a witness of lawful age after being duly sworn deposes & says,

Question by Plaintiff. Or will you please state if you did not purchase from Ales Hyman the notes executed by Wm L Turner and Wiley Hyman. to him for the purchase price of the Mill property now owned and occupied by James W Orr.

Answer. I did. I made said purchase according to my present recollection on the 5<sup>th</sup> day



of September 1868 or it might have been in 1867.

- 2 Question by same, Please state the sum for which <sup>said</sup> notes were, executed, and the amounts paid on them before you made the purchase if any thing?

Answer. I collected on said notes after I purchased them, Seven hundred and thirty five dollars, <sup>which was paid me by W<sup>m</sup> L Turner</sup> and that is the sum I paid to Ales Hyam, for them, and my understanding was that the sum of one hundred and sixty or one hundred and sixty five dollars had been paid to Mr Hyam towards the purchase price of said property before I purchased the notes.

- 3 Question by same, Did not Mr W L Turner try to sell said property to you before he sold it to Mr Orr. If so will you please state what price he asked you for it?

Answer He did come to me to sell me said property, and he asked me for it the sum of \$1300 This was some two or three or four months before he Turner paid me money on said notes

- 4<sup>th</sup> Question by same, State as nearly as you can when he paid, you money for said notes

Answer As well as I now remember it was in November or December 1868, at which time I understood from B Turner he had sold the property



5<sup>th</sup> Question by same. Will you please state what you consider was a fair cash price for that property at the time Mr Turner attempted to sell it to you

Answer I did not consider the property at that time worth what Dr. Turner asked me for it.

6 Question by same, At the time Mr Turner offered to sell to you, did he propose to sell the whole property or did he want to make any reservations, of a life estate or anything of the kind?

Answer My recollection is that he wanted to reserve a House and perhaps a lot for the use of himself for life, but I do not remember of his wanting to reserve any interest in the mill.

7<sup>th</sup> Question by same What reason did he assign for desiring to sell said property?

Answer, My recollection is that he gave as his reason for wanting to sell was on account of his affairs in Tennessee and being unable to pay for the property.

### Croft Examined.

1<sup>st</sup> Question: At the time, Dr. Turner proposed to sell to you, did not propose to sell any ones interest but his own did he?

Answer - I think he proposed to sell his, and Mrs. Hymns interests

2<sup>d</sup> Do you know what price Dr. Turner & Mrs. Hymns



agreed to pay Ales. Hym for said property  
and what the original note was executed for  
Answer I do not

3<sup>d</sup> Ques. After James W. Orr purchased said prop-  
erty, did he ever, propose to construct the  
new mill, in partnership with you?

Answer He did not.

4. Did he ever propose any terms of partnership  
or joint occupancy of the same with you?

Answer He did not.

Did you ever propose such partnership  
with him or have any conversation about  
such partnership or occupancy, and if  
so state, what terms you asked and he  
offered in such arrangement?

Answer Some time after Mr Turner offered to sell  
the property, I met with Mr Orr in town, when I  
asked him if he would join with me in the purchase  
of said property, when he declined to do so, saying  
he was then not able.

And further this witness saith not.

Jas. S. Browning

Witness charged  
1 day 50 cts.  
Paid by J. W. Orr.

The foregoing deposition of James H. Wood was taken  
subscribed & sworn to before me at the time and  
place and for the purposes in the caption mentioned.  
Given under my hand. Nov 15<sup>th</sup> 1882.

Chas. Geo. P. 1.50

J. A. B. Hyatt Court.



About the 18<sup>th</sup> Novr 1882, the depo.  
of James G. Browning taken in this  
cause, was taken before me as  
Clerk in Chy, and among other  
questions propounded to that  
witness was one in the following  
words to wit " At the time Dr. Lums  
proposed to sell to you he did not  
propose to sell any ones interest but his  
own did he? To that question I put  
down his answer in the following  
words. " I think he proposed to  
sell his & Mrs. Myer's interest.  
So on thereafter his deposition  
was closed, and the parties left  
Said Pridemore's room where the  
said depositions had been taken.  
but I remained there for awhile, &  
not long thereafter the Plaintiff  
& Dr. Browning returned to said  
room, when Dr. Browning said,



that he thought a mistake had been made in recording his answer to the before stated question, and upon an examination thereof he directed me to strike out "I think" which I accordingly did leaving the response to that question as follows.

"He proposed to sell his and Mrs. Myer's interest..

I do not now remember how Dr. Browning answered the question when first propounded whether he said "I think" as it first used by me or whether he responded as the tape now shows.

H. J. Morgan  
Feb 10 1883

The foregoing statement, by agreement, between the parties, is admitted as evidence. J. A. Hyatt Secy.



The foregoing deposition of James G. Browning  
was taken, subscribed and sworn to before me  
at the time and place and for the purposes  
in the caption mentioned. Given under my  
hand November 18th 1882.

Henry J. Morgan



James W Orr.  
253 Depos of Wood & Braum  
- ing  
Wm L Lurmer et als.

Filed Febry - 1853.

J. H. Hyatt  
Clerk

+ Frank Wood  
Jas G Brauning.

Courts fee to Hyatt p 150  
wit



The deposition of James B. Burnett

Taken at the law office of A. L.

Pridemore in the Town of Jonesville on the 18<sup>th</sup>  
day of November 1882, pursuant to agreement  
before the undersigned

and intended to be  
read as evidence in behalf of the Defendants  
in a chancery cause now pending in the  
Circuit Court of Lee County, Virginia in  
which James W. Orr is Plaintiff and Wm  
L. Turner ~~and~~ others are defendants,

Present J. W. Orr. Plff & C. S. Duncan one of his  
counsel, Wm L. Turner & C. L. Hamblin two  
of the defendants and A. L. Pridemore their counsel  
James B. Burnett a witness of lawful  
age being duly sworn deposes & says -

Did you, as practical <sup>mill</sup>er, occupy the water  
grist mill, of James W. Orr? If so how  
long and for what years?

Answer. I occupied said Mill as the miller  
for the period of about 4 years and 3  
months. I do not recollect the year in which  
I went into said Mill nor the year I left it.  
I have been away from said Mill ~~five~~ years  
last April as I now think

Question 2<sup>d</sup>. How much grain, was received  
by you, for toll of said mill, wheat,



proportion ~~was~~ wheat, what corn?  
Give your best estimate: —

Answer. I kept no account for any part of the time except the first three weeks I kept the mill. I therefore cannot give you a satisfactory answer to the question for the first week I got to my part, 1 Bu  $1\frac{1}{2}$  gals of grain the second week I got 2 Bu and 3 gals of grain and the 3rd week I got 4 Bu of grain, to put the 4th week of the month at the same as the third week my part for the 1st month would be about  $11\frac{1}{2}$  bushels.

My part or the amount I got of the tolls of said mill <sup>was</sup> one third part.

Question 3<sup>d</sup>. Was the mill, employed, as a general thing, for its working hours of each, would it average, a constant employment for each <sup>day</sup>? If not about how many days in the week would it require the mill to grind up the custom work?

Answer. While I cannot answer the question with definiteness, my best opinion is that the tolls of said mill for the time I kept it would average with the third week as given above.

Question 4<sup>th</sup>. During your term as miller, did Mr or Mr, direct you to pay Wm L. Turner any part of said tolls? if so how much, tell all about it?



Answer. I received orders from Mr Orr to let Mr Turner have some grain but how much he got I cannot tell. Some of said orders were limited to so many bushels or pounds another one was unlimited in amount.

Question 5- Can you give any estimate of the amount of grain delivered to said Turner under the unlimited order?

Answer I cannot.

Cross examined by the Plaintiff

1 Question by Plaintiff Will you state as nearly as you can what proportion of the tolls made by said Mill was wheat and what proportion was corn?

Answer My opinion is that there was a little more of wheat than corn.

And further this deponent saith not.

J. B. Burnett

The foregoing deposition of J. B. Burnett was taken, subscribed & affirmed to before me at the time and place and for the purposes in the caption mentioned. Given under my hand. 10th 1882.



Wm L Lurmer et als.

ads { Depo of Burnett.

James W Orr.

Filed Nov. 1880

J. H. H. H.

Wit Thoms. 28



C. L. Hamblett Deft }  
versus } In Chancery x Hills  
James W. Orr Deft }

The deposition of Michael M<sup>c</sup>Clure  
taken before me on the 28<sup>th</sup> June 1884  
at the time of taking an account  
in the above styled Cause,  
The said Michael M<sup>c</sup>Clure being duly  
sworn deposes and saith.

As well as I now remember  
I moved to the house in which  
Mr. W. L. Turner now lives, in the  
month of July 1869, for the purpose  
of tending a mill known as the "Dartem  
Mill," <sup>erected by Mr. Orr</sup> previous to the time he built  
his present mill. I attended said  
mill from that time until the  
next Spring, during some time  
of said spring the water cistern  
of the Dartem Mill, bursted. Mr. David  
Orr Sr. tended the mill a short  
time before I commenced atten-  
ding said mill, while I attended  
said mill I kept an account of  
the tolls arising therefrom, in order  
that I might divide justly between  
Mr. Orr & myself - and at one  
time knew how much said mill  
yielded, but I have forgotten at



at this time, all about it, and I have no means now at my command of forming an approximate estimate of what said mill did produce in tolls, either by the day, week or year. I remember however that the mill did very little grinding while I tended the same.

My recollection now is that I lived in the house I moved into something over one year at the lapse of which time I turned over said house to Mr. J. W. Orr who informed me he desired the same for Mr. Taylor to live in while he, Mr. Taylor was engaged in building the new mill house.

Cross examined

Question by Defendant Orr. Did you pay any rent for the house and lot for the time you lived in it

Answer. I did not. Mr. Wm. L. Turner informed me, while I was living in said house, that the house and lot, would belong to him & his wife during their lives



and that I could occupy said house till he returned, he was then preparing to start off to take charge of a circuit, he and his family stayed with me about one month while I lived in said property.

Question by same. Do you think the earnings of that mill, in the condition <sup>it</sup> was when you attended it as Miller would have been worth as much as one hundred dollars or <sup>for the entire time it was running</sup> more or less. Give your best opinion?

Ans I don't think it would be worth as much as \$100.00.

And further this deponent saith not.

Michael <sup>this</sup> McElure  
Mar 30

Sworn to before me June 28<sup>th</sup> 1884

J. A. Hyatt  
Clerk

Witness Claim \$ .50<sup>0</sup>



C. L. Hamblen  
on 4 Dec  
vs 3 Dec.

Gas. W. Orr

Michael McClure

S. 80  
W. 50 Ticket given  
70

70



James W. Orr Compt. } Orig Bill  
 vs }  
 Wm. L. Turner et al Defts }  
 and }  
 C. L. Hamblew Compt. } In Ch'cy  
 vs }  
 James W. Orr Defts } + Bill

To the Hon. John A. Kelly Judge  
 of the Circuit Court for Lee County...

The undersigned having been appointed  
 a commissioner in the above styled cause  
 to "take an account under the Crossbill  
 of the rents, issues and profits, of the Mill  
 property, in controversy in this cause, in  
 which account the mill property shall be  
 charged with all necessary repairs thereon  
 from the time at which Wm. L. Turner & wife  
 became tenants in common with James W. Orr,  
 that is from the date of the deed to Turner  
 by Orr, until the sale to C. L. Hamblew in  
 the bill & exhibits mentioned; and of all necessary  
 expenses in running said mill; and the said mill  
 property shall be credited with the income  
 or tolls received therefrom;



and said Commissioner will show what balance of income or tolls, if any, is thus left for distribution.

He will then Charge Mr. Orr, with the whole income or tolls received by him, and Mr. L. Turner with the whole amount of income or tolls received by him either directly or through Mr. Orr; and allowing Mr. L. Turner one fourth of the net tolls or income, and Mr. Orr three fourths of the net income or tolls, after deducting cost of necessary repairs and expenses. He will show whether either party is indebted, on account of such income or tolls to the other, and if so how much.

And the Commissioner will further ascertain the cost of the permanent improvements on the said Mill property, and what would be a just and fair proportion of said cost to be borne by Mr. L. Turner on account of his and his wife's interest therein; and he will finally show upon the basis of this record what is the state of the account, thus made.



up between said Orr & Turner: and a similar account may be taken between Jeff. Hamblin and Deft Orr since Hamblin's purchase.

Respectfully report, that in obedience to said decree, after giving all the parties in interest and their Attorneys notice, I commenced on the 3<sup>d</sup> July 1884, to take Depo. in said causes; and after taking the deposition of several witnesses concerning the cost of erecting the new mill &c, the parties, to the very great satisfaction of your Commission, and to the interest, no doubt, of all concerned, entered into and signed agreement "A." herewith filed, which fixed the cost of the "Darter mill," at \$300<sup>00</sup> as of Apr. 1<sup>st</sup> 1869, and that of erecting the new mill at \$2280.17 paid Aug 15<sup>th</sup> 1872, which amounts constitute a count "D" as amended filed with Mr. Orr's answer to the Cross bill. making a total cost of \$2580.17, expended on said mill property down to Aug. 15<sup>th</sup> 1872.



Said Agreement also fixes the amount of tolls (net,) after deducting Mrs Wynn's share, received from the Darton Mills at \$80, as of April 1<sup>st</sup> 1870, and the annual amount arising from the net tolls of the new mill, from Aug. 15<sup>th</sup> 1872. to Sept. 15<sup>th</sup> 1882, at the sum of \$408.00 these facts could hardly have been obtained or even approximated in any other way than by an agreement, Some small expenditures by Mr. Turner as will be seen, are admitted in said Agreement "A." as well as some small receipts by Mr. Orr.

It then only remained for me to ascertain the cost of necessary repairs &c to keep the mill in running order from the time the new mill started Aug. 15<sup>th</sup> 1872: to Sept 15<sup>th</sup> 1882, time of sale by Turner to Hamblen, in order that I might take the account as directed by said decree with the mill property.



And after spending several days  
 in taking proof on this and other  
 points, all of which is herewith filed  
 marked Depositions, the parties announced  
 that they had no further evidence to  
 offer. I then proceeded to scan  
 the Depositions, and found that there  
 had been expended for necessary  
 repairs and running expenses down  
 to Sept, 15<sup>th</sup> 1882, the sum of \$717.13, in  
 which amount is included \$60.00  
 as allowed Mr. Orr for his services in  
 superintending the repairs to our said  
 + mill - the evidence seems to indicate  
 that his services in superintending  
 was reasonably worth from \$10 to 15<sup>¢</sup>  
 annually, but as there was but  
 little expended above taxes and  
 a small sum on the race, for the  
 first four or five years after the  
 new mill started - I have only  
 allowed him <sup>pay for</sup> services for such  
 years as there seemed to be considerable



Amounts expended - I have also  
failed to embrace in this sum  
any amount for the rents of the  
house now occupied by Wm. L. Lurnum  
the exclusive use of which has been  
decreed him & wife for life, <sup>in this cause</sup> from the  
fact that these allowances were not  
sufficiently connected with the mill  
property to be chargeable thereto. In  
this your Court may be mistaken and if  
so, he is honestly so, and herewith files  
Special statements 1, 2 & 3, which show  
said sums as claimed & partially proven.  
As will be seen by Statement "D. & E."  
all the expenditures are charged according  
to the dates of payments, except the work on  
the race which seemed to have been  
performed indefinitely, and the amt.  
for this work I have averaged for  
the ten years, giving \$8.97½ annually  
as the amount of average work done



on the race. to which average I have added the annual other expenditures, and as before stated resulted in finding that there had been thus expended the ~~the~~ sum of \$717.13 down to Sept 15<sup>th</sup> 1882, of which sum W. L. Lurmer had expended the sum of \$41.00 and Mr. Orr the balance \$676.13 - See Statement "R. E."

Upon the agreed cost of Darter & new mill, <sup>account "C."</sup> and Statement "R. E." I base the account with the Mill property herewith filed marked "M. P."

In taking this account I have charged said Mill property with the taxes paid thereon, Cost of Darter Mill - Apr. 1<sup>st</sup> 1868, and with amt pd by Lurmer for barding Gott & son as agreed, on which amounts I have calculated & added interest to Apr. 1<sup>st</sup> 1870, time of first receipts in the way of tolls from Darter mill



recd Apr. 1<sup>st</sup> 1870. and given credit  
of 80¢ amt of tolls recd. leaving as  
balance due or unpaid of this in-  
vestment Apr. 1<sup>st</sup> 1870 the sum of \$250.15-  
upon which sum I compute & add int,  
to Aug. 15<sup>th</sup> 1873, the time of next receipts,  
I also charge said property with the  
cost of new mill & interest to said  
time, with the taxes as paid, & interest and  
with the annual expenditure for  
taxes & repairs to Aug. 15<sup>th</sup> 1873, giving  
the sum total as expended for all  
things to said date the sum of \$2762.68

I then give this amt credit with  
\$420.24 as amount received in the  
way of tolls, this sum includes \$12.  
24 cents as half interest on the \$408.00  
in tolls rec'd, which your Commissioner  
considers fair as between the parties,  
the tolls being received, ordinarily  
every day, it appears to me that



half interest should be allowed; this course is pursued, calculating interest on balance due the mill at 6% and 3% on tolls, annually down to Sept, 15<sup>th</sup> 1882, which results in finding that there is of net <sup>due expenditures</sup> tolls, the sum of \$161.00 for distribution between Jas. W. Orr & Wm L. Turner in the proportion of  $\frac{1}{4}$  to Turner &  $\frac{3}{4}$  to Mr. Orr.

I then as directed by said decrees charge <sup>The Mill Property</sup> ~~Mr. Orr~~ with all amounts as paid by Mr. Orr, in the construction of said mill &c, and give him Credits for all amounts received by him, annually, See Statement "O," down to the said 15<sup>th</sup> Sept 1882, which results in finding that he is on that day due from said Mill the sum of \$34.09

I also make a similar Statement herewith filed marked "L" in which



Mr. Lurmen is charged with all  
his receipts from said mill prop-  
erty, and given credit in like  
manner for all amounts he paid  
in which is embraced in Statement  
'R.E.', which results in finding that  
Mr. Lurmen is indebted on the  
15<sup>th</sup> Sept 1882, to said mill property  
an Mr. Orr the sum of \$34.09  
this result is obtained after giving credit  
for the  $\frac{1}{4}$  interest in the net tolls of \$161.00  
found for distribution in Statement M.P.  
and is the amount due from Lurmen  
on account of the tolls of the mill  
& cost thereof.

I have considered the building  
of the Millers House to completion  
and the erecting of the Granary as  
permanent improvements on said  
mill lot, and made a statement  
of the cost thereof, herewith filed



marked "P. I.", which shows that the entire cost of such improvements down to Sept. 15<sup>th</sup> 1882 including 6% interest from the time of the ~~pay~~ ~~payments~~ amounts to \$720.09 subject to a credit of \$29.00 as amount received by Orr, for house rent from Gillespie - which leaves on said day the sum of \$691.09; all of which was paid by James W. Orr, — A fair proportion of this sum for Mr. Lurner & wife to account for, considering their  $\frac{1}{4}$  life interest in the property according to the rule governing life interests, is \$86.02, as shown by said Statement.

And upon the basis of the decree, the proof in the Cause, and your Commissioners views, Mr. Wm L. Lurner, is due, on account of taxes and permanent improvements to Mr. Orr on the 15<sup>th</sup> Sept 1882, the sum of -- \$120.11.

34.09  
86.02  
\$120.11



I have also made a similar Statement, between Mr. Orr, the mill property and E. L. Hambley, since Sept 15<sup>th</sup> 1882 time of his purchase from Turner wife down to July 12<sup>th</sup> 1884, herewith filed marked "Ex. O," which shows that Mr. Orr is due said Hambley on said day an account of tolls arising from said mill above the necessary expense in running said mill, the sum of \$131.05<sup>3</sup>/<sub>4</sub>, and <sup>1</sup>/<sub>4</sub> of the amount arising from the rent of store house the sum of \$7.50 - which in the opinion of your Commissioner, is all that said decree demands at his hands - But at the request of the Defendant I have prepared and herewith file Special Statement No 1 & 2, - in which statements



Defendants views of what it takes to constitute repairs on the mill property, and what should be termed permanent improvements thereon are considered &c.

In Special Statement No. 1 as will be seen said Mill property is charged (as paid by Mr. Orr) with taxes, Cost of ~~construction~~ <sup>Darter &</sup> new mill, with Interest on these sums from time of payment down to Aug. 15<sup>th</sup> 1873, and with \$100. & Int, for his services in superintending the erection of the new mill, (which amount was omitted in Statement No. 1 from the fact that Account "D" as amended, was agreed to be taken as the entire cost of the mill property in the way of repairs down to Aug. 15<sup>th</sup> 1873,) which sums amount in the aggregate including the average expenses for repairs <sup>\$79.61</sup> as claimed to be the fair



Mode by Deft, to Charge annual Expen-  
ditures, on the 15 Aug. 1873  $\$300.08$   
as the entire cost of repairs up to the 15<sup>th</sup>  
Aug. 1873, which amount is credited  
with the 80¢ with Interest thereon to  
said date, the amt of tolls recd from  
Garten Mills, and with  $\$408$ , the amt  
of a <sup>net</sup> agreed annual tolls, less Mrs Myrns  
 $\frac{1}{4}$  interest therein which was due  
her or her assignee on account  
of the interest she reserved in  
her deed to Turner & Orr herein  
filed. which left the sum of  $\$506.00$   
 $+96.20 = \$402.20$  as credit of this  
date, it will be observed that no  
part is interest on the  $408.¢$  as tolls;  
there appears to be due Aug 15 1874  
the sum of  $\$2838.66$ , adding interest  
and average annual expenditures  
as before - which sum is credited  
with  $408¢$  less  $34¢$  as the amount



due Mrs Wyam at the time her interest in the tolls of said mill expired leaving as a credit the sum of \$374.00 as of Aug. 15<sup>th</sup> 1874, the same course is pursued from this time to the 15<sup>th</sup> Sept 1882.

Calculating interest on balance due & giving credits annually for the 408¢ recd as tolls, and taking this view of the ~~case~~ the statement shows that the mill property is indebted to Mr. Orr the sum of \$1352.17, ~~Sept 15<sup>th</sup> 1882.~~

It will be observed that said statement considers all the improvements as repairs on the mill property, of which Mr. Turner should pay  $\frac{1}{4}$  except the building of the granary, which is considered a permanent improvement, to which Mr. Turner should only contribute his proportional share \$12.45 as charge &



Special Statement No. 2. is exact-  
ly on the same principal as  
Except that the Mill Property is  
Charged with \$200.00 as paid to  
Mrs. Myron for her interest by Mr.  
Or. (See her Depo. & Deed.) This statement  
Charges the 200<sup>00</sup> and gives  
Credits for all receipts, resulting  
in finding ~~th~~ - the Mill Property  
Considering all expenditures, ex-  
cept the Issuance, as ~~before~~ is in-  
debted to Mr. Or in the sum of  
\$1518.32  $\frac{1}{4}$  of which would be  
\$379.58 the amount Turner  
should pay over taking this  
view of the case before he could  
share in the distribution of  
the <sup>net</sup> income or tolls arising from ~~3 d~~ Mill

And at the request of Counsel  
for Defendant Turner, Special  
Statement No 3, herewith filed,  
is made and -



assumes that, the cost of building  
 the Darton Mill, cost of erecting  
 the new mill ready for grinding  
 flour & meal with ~~all~~ its attach-  
 ments, the building of the millers  
 house and the granary, are all  
 permanent improvements, and  
 they are so considered in this  
 statement, and that the necessary  
 expense <sup>in the way</sup> of repairs &c. in keeping the  
 mill in running order since the  
 new mill started Aug. 15<sup>th</sup> 1872 are  
 held and considered as ~~the~~ repairs  
 on the mill property  
 of which Mr. Lurner should contri-  
 bute  $\frac{1}{4}$  and Mr. Orr  $\frac{3}{4}$  - and that  
 Mr. Lurner should only contribute  
 a fair proportion of the permanent  
 improvements as compared with  
 his  $\frac{1}{4}$  life interest - This statement  
 shows that ~~of~~ the amount expended  
 together with its interest to Aug. 15<sup>th</sup> 1873  
 is \$2795.68 and that Lurners proportion



of this amount is \$377.49, and the amount with which he should be charged, as will be seen by said statement I have given Mr. Turner credit with \$35.00 & interest thereon annually for the use and occupancy of his house & lot near the mill, for 6 years, and with the amount of expenditures by said Turner, and charged him with his  $\frac{1}{4}$  annual expenses, and with his receipts, and taking this view of the case, it will be seen by said Statement that there is due to said Turner & wife on account of said income & tolls on the 15<sup>th</sup> Sept 1882 the sum of \$627.59.-

There has been some admissions and proof setting up private and individual claims of the parties indebtedness to each other, which



Your Court, has not noticed in  
casting up this account, but as  
the decree directs, I have endeavor-  
ed to confine the account to  
the mill transactions, the results  
of which I hope are plainly set  
forth in the statements, if not  
in this report, which has been,  
for want of time, hastily written.

Respectfully submitted.  
J. A. Hyatt  
Court.

There is some proof concerning the  
use of a stable, and store house by  
Mr. Turner, situated on the mill property  
as well as various amounts expen-  
ded by Mr. Turner in repairing  
said stable & store house, which  
in your Commissioners opinion  
about balance. Hyatt.



This report is excepted to because, the Com  
 treats the mill hands & timber as repairs, when in  
 law or fact they are permanent improvements  
 and Lums & wife should only be held liable for  
 the same in proportion to the interest they hold  
 2 Because no rent is allowed Lums & wife for their  
 Home lot - Because the acct for repairs is  
 out of all proportion for such work each  
 and every item of each & every statement which  
 allows acct for new mill or repairs is  
 excepted to - see memo of exceptions in paper  
 Aug 27/84  
 Morgan & Freeman

C. L. Dublin

Comms Report

James W. Orr

Filed Aug. 16/84

J. A. St. John  
CER

Commissioners fees \$100.00



C. L. Hamblen      Puff }  
 vs.                                      }  
 J. W. Orr                      Draft } One Draft Bill in Pay

To Maj John A. B. Hyatt Commissioner in this Cause.

Prior to the day of 18 Mrs Hyman

and W. L. Turner were the owners by purchase from Aches Hyman of Mr Orrs present Mill site with the remains of an old mill situated thereon; and on the day above named Mrs Hyman by deed conveyed to said Turner her undivided interest in said property. but she at the same reserved to herself the right upon certain conditions and within a limited time, to repossess and re own said property so conveyed to Turner, and she also reserved to herself the fourth part of the <sup>net</sup> tolls of any mill that might be erected on said property. all which is shown by her said deed.

On the day of 18 said Turner conveyed to J. W. Orr said Mill lot &c but as a matter of course subject to Mrs Hymans reserved rights therein, and on the day of 18 the said Orr conveyed to said W. L. Turner and wife or the survivor of them during life, the use of the house and lot now occupied by said Turner, and one fourth part of the tolls of such mill as might be erected on said property: While matters thus stood Mrs Hyman was entitled to a fourth part of the tolls, Mr Turner to a fourth and Mr Orr, a half: If Mrs Hyman had seen proper to have claimed her full rights under said reservation and had done so, she could have owned one half the mill and one half the tolls, and <sup>would have owned during life a fourth of the mill & Mr</sup> ~~and~~ <sup>with the remainder after Turners wifes death and a half</sup> ~~and~~ <sup>Mr</sup> Turner & Orr. could have ~~owned~~ <sup>owned</sup> a fourth of the mill, ~~and~~ <sup>and</sup> been entitled ~~and~~ <sup>to</sup> a fourth of the tolls; Mr Orr in order to extinguish these reserved rights of Mrs Hyman under her said deed, purchased them at the price of



\$200.00 and in consideration thereof Mrs. Wynn by deed dated  
the 18<sup>th</sup> relinquished to Mr. Orr said reserved rights <sup>for</sup> ~~as~~ <sup>as</sup>  
and it is this relinquishment which now entitles Mr. Orr. to three  
fourths the tolls of said Mill, and these being the substantial  
facts of the case, as disclosed by said deeds, copies of which are filed  
in the original cause, Mr. Orr cannot now charge said \$200.00  
or any part thereof to W. L. Turner or B. L. Hamble, or as any part of  
the costs of the erection of said Mill, or its current running expenses:  
That sum was simply the price paid by Mr. Orr. to extinguish Mrs.  
Wynn's reserved rights under her said deed.

The claim set up by Mr. Orr. for \$100. or any other sum for his services  
in superintending and directing the erection and construction of said  
Mill cannot now be allowed as a charge in his favor for any  
purpose whatever. For were it a proper charge in any view  
of the case, it would add that much to the cost of the erection  
and construction of said Mill, and the parties have agreed in  
writing that the cost of the present Mill was \$2280.00 and that  
of the Dexter Mill \$300. so that nothing can be added thereto or  
taken therefrom except by consent of parties.

The Off. says that the claim of Mr. Orr for compensation for  
superintending the repairs on said Mill is not a proper charge  
and should not be allowed. But if any thing should be allowed  
for such services, the same might not under any circumstances  
to exceed 5 or 10 per cent upon the amount of the cost of such repairs.

W. L. Turner was and is entitled to the <sup>use</sup> exclusive of the House and



lot on which he now lives, and these were used and occupied from Jan 1869 to Oct 1876 by others than said Turner and during nearly all that time ~~was~~ used and occupied by Persons working on the Mill in its construction, and as keepers of the Mill & thus the same was used for the Mutual benefit of Messrs Orr & Turner and these being the facts said Turner is entitled to charge the firm of Orr & Turner for the reasonable rental value of said house lot for the time so occupied by others, and the annual rents to be paid by said firm in the same proportion that they are each required to bear of the <sup>cost of the</sup> repairs and improvements on said Mill property.

It is known to all who know Mr Turner that he is a poor man and greatly needs the annual tools of said Mill due him upon which to live, and support his family, and since it is shown that said Mill would rent to the average Millers of the country for one third of its gross earnings without any Miller's house at all, or with a Miller's house which would not cost more than \$100. or \$150.00 And the new Miller's House erected on the Mill lot having cost more than \$400.00, and with this more costly house the present Miller still gets one third of the gross tolls of the Mill, it would seem to follow from this state of facts, that said Turner is not benefitted in the least by the building of the more costly Miller's house and that so far as he is concerned the money spent in the erection of the new Miller's house beyond \$100, or \$150.00 was idle and altogether unnecessary so far as Mr Turner is concerned, and being so. no more than \$100. or \$150. should be charged on account of the new Miller's House. either as a repair, or as a permanent <sup>an</sup> improvement.



The plaintiff says that the ~~permanent improvements in this~~  
~~are all the~~ Erection of the Mill House, the building and constructing  
the Mill, with all its Machinery and appliances for making flour &  
Meal: The erection of the new Millers House, and the building of the  
Store House or granary: <sup>are all permanent improvements.</sup> And W. L. Turner having only a life estate  
therein during the life of himself and wife both of whom are now old  
that said Turner ought only to be charged with such part of one fourth  
part of the cost thereof, as his life interest therein would bear to a pro-  
portional till thereof. And the Plaintiff further says that the <sup>expenses</sup> running and  
incidental repairs on said Mill since the same has been in operation,  
and the repairs on the stable and Store House constitute the repairs in  
this case. And the said Turner admits he may be required <sup>by this order</sup> to pay  
one fourth part of these repairs; And the said Commissioner will  
so state an account between said Turner and Orr as to present the  
~~in the~~ view here contended for. and attempted to be laid down:

There is nothing in the original cause, or in the complaint or answers thereto  
or in the decree under which you are acting which contemplates, seeks,  
or requires you, to make any settlement or statement of any private  
~~and~~ ~~and~~ individual matter as between W. L. Turner and Mr. Orr  
or between Mr. Orr and Mr. Hambley, the only thing sought or  
contemplated by the whole proceeding is a settlement & adjustment  
of the matters pertaining to the Mill property & its appurtenances, And  
hence the plaintiff says that you ought not and cannot under said  
decree and the pleadings in the cause, undertake to settle and adjust  
any individual matter of account <sup>that may exist</sup> as between any of said parties ~~to the~~  
~~part~~ And any special matter which you are required <sup>to make by</sup> to make by  
the terms of said decree at the request of either party, relates solely to  
the matter pertaining to said Mill & the matters directly connected therewith.



To Commissioner  
John A. G. Hyatt.



# Special Statement No 1

## The Mill Property in account with James W. Orr.

		\$	Cts
Agreed	To this sum pd Taxes for year 1868. . . . .	1	92
"	" " " " For Carter Mill April 1 <sup>st</sup> 1869	300	00
"	" " " " Taxes for year 1869. . . . .	1	75
"	" " " Interest on these sums to Aug. 15 <sup>th</sup> 1873	79	71
Agreed	" " " pd for new mill Aug. 15 <sup>th</sup> 1872	2280	17
"	" " " Interest thereon to Aug. 15 <sup>th</sup> 1872	136	81
"	" " " pd Taxes for years 1870, 1871 & 1872.	19	11
"	" " " For services in building new mill	100	00
"	" " " Interest thereon to Aug. 15 <sup>th</sup> 1873	6	00
"	" " " Average Expenses for year. "	79	61
		\$3005	08
	By amt paid for new mill 1873	402	20
Aug 15 1873		\$2602	88
	To Interest on this sum to Aug. 15 <sup>th</sup> 1874. . . . .	156	17
"	" average Expenses this year. . . . .	79	61
		\$2838	66
" 1874	By amt paid for new mill 1874	374	00
		\$3464	66
	To Interest on this sum to Aug. 15 <sup>th</sup> 1875. . . . .	147	88
"	" average amt Expenses this year	79	61
"	" amt pd for Millers House "	410	00
		\$3102	15
1875	By amt paid for new mill 1875	408	20
	Carried forward. . . . .	\$2694	15



	Unit Debits Brought forward	\$269.15
	To Interest on this sum to Aug. 15 <sup>th</sup> 1876	161.65
	" and average Expense this year.	79.61
1876	By unit tolls rec'd this year.	\$2935.41
		408.00
		\$2527.41
	To Interest on this sum to Aug. 15 <sup>th</sup> 1877	151.64
	" Turners proportion of Graining " "	13.45
		\$2691.50
	" Average Expenses this year. "	79.61
1877	By unit tolls this year - \$1120 = 3068	\$2771.11
		300.00
		\$2465.11
	To Interest on this sum to Aug. 15 <sup>th</sup> 1878	147.90
	" Average Expense this Year	79.61
1878	By unit tolls rec'd this year	\$2692.62
		408.00
		\$2284.62
	To Interest on this sum to Aug. 15 <sup>th</sup> 1879	137.07
	" Average Expenses this Year.	79.61
1879	By unit tolls this year with	\$2501.30
		408.00
		\$2093.30
	To Interest on this sum to Aug. 15 <sup>th</sup> 1880	5.60
	" Average Expenses this Year	79.61
1880	By unit tolls rec'd this year	\$2298.51
		408.00
		\$1890.51
	To Interest on this sum to Aug. 15 <sup>th</sup> 1881	113.43
	" Average Expenses - " "	79.61
1881	By unit tolls rec'd this year	\$2083.55
		408.00
		1675.55
	Amount Carried forward	



Amount Debits brought forward		\$1675.55	
To Interest thereon to Sept 15 <sup>th</sup> 1882		108.91	
" Average Expenses to Sept 15 <sup>th</sup> 1882		79.61	
			\$1864.07
By amt payable Sept 15 <sup>th</sup> 1882	\$442.00		
" " Paid for adv. in Standard	110.90		
Sept 15 <sup>th</sup> 1882 " " " " Paid Miss. Amos	29.00	511.90	
Am't Still due Orr. ....			\$1352.17



*Special Statement*

*No. 1*



Special Statement No. 3.

Wm L. Turner & wife in account with  
the Mill Property & Jas. W. Orr in  
account of tolls &c. . . .

To said James W. Orr..... \$

Agreed To amount pd for Oster Mill Apr. 1 1869 \$300 00

11	11	Interest Thereon to Aug 15 1873	78.70
----	----	---------------------------------	-------

Acct O	"	"	Total Cost of new miles	"	"	1872	2280.17
--------	---	---	-------------------------	---	---	------	---------

11	11	Interest thereon to Aug. 15 1873	136.81
----	----	----------------------------------	--------

Aug 15 1873 Total amt for Improvements to Aug 15 1873. \$273. 68

Of this asset Turner should pay, as life tenant, \$348 22

Lo $\frac{1}{4}$ the repairs & taxes with Int. to Aug 15 1873	49	27
---	----	----

By amt house rent year 1870.35¢ Int 6.30 = \$41.30 \$397.49

" " " " " 1852/53, Int. 10 = 37.10

11 " feds in housing Cntl + serv + sub = 10.40

1873	" Process boat for gas engine August	25.00	\$27.06
------	--------------------------------------	-------	---------

Amount debits forward... \$105.43



	Am't Debits brought forward.	\$105.43
	To Interest on this sum to Aug. 15 1874	6.32
	" 1/4 Expenses this year. " "	13.09
		\$124.84
	By amt. brought this year	35.00

1874

	To tolls for year ending Aug. 15 1874	105.06
	Am't due Turner Aug. 15 1874	\$15.58
	To Interest on this sum to Aug. 15 1875	.93
	" 1/4 tolls for year ending " "	105.06
	" this sum house rent for year	35.00
		\$156.57
	By proportional amt of Miller's share	50.96

1875

	" 1/4 Expenses for year	13.09
		64.10
	To Interest on this sum to Aug. 15 1876	5.55
	" 1/4 tolls for year ending Aug. 15 1876	105.06
	" this sum for house rent, " " "	35.00
		\$238.13

1876

	By 1/4 Expenses for this year	13.09
		15.73
		\$222.20
	To Interest on this sum to Aug 15 1877	13.32
	" amt. Expended by Turner this year	14.00
		\$249.53
	By 1/4 Expenses for the year	51.87

1877

	" 1/4 tolls paid by Turner	105.06
	" Turner's proportion of house rent	12.45
		139.38
	Amount Carried forward..	\$110.15



	Am't, Debits brought f'wd,	\$110 15
	To Interest thereon to Aug. 15 <sup>th</sup> 1878	6.60
	" 1/4 tolls for year ending " 15 1878	105 06
1878	By 1/4 Expenses this year	\$221 81
	To Interest thereon to Aug. 15 1879	12.79
	" 1/4 tolls for year ending Aug. 15 1879	105 06
1879.	By 1/4 Expenses this year	\$331.12
	To Interest on this sum to Aug. 15 1880	19.07
	" 1/4 tolls for year ending " " "	105 06
1880	By 1/4 Expenses this year	\$442.01
	To Interest on this sum to Aug. 15 1881	25.39
	" 1/4 tolls for year ending " " "	105 06
	" amt pd on Expenses this year	19.00
1881	By 1/4 Expenses this year	\$572.69
	To Interest on this sum to Sept 15 <sup>th</sup> 1882.	35.61
	" 1/4 tolls up to Sept 15 1882	113 81
1882	By 1/4 Expenses up to Sept 15 1882	\$697.37
Sept 5 <sup>th</sup>	Am't due Turner & wife	\$637.59



This statement numbered 3 is accepted to, because it only makes Turner, pay in proportion to the value of his life estate. This is clearly erroneous because under their deed from Orr they were only entitled to  $\frac{1}{4}$  of the mill tolls of the mill that was then on the property and before they can elect if they have the right of election to take  $\frac{1}{4}$  of the tolls of the new mill, Mr Orr must be fully repaid for all expenses incurred by him in putting the property in a condition to yield the tolls out of which they now claim a profit.

2. Said Statement is further accepted to because it charges Mr Orr with rent of the house and lot which he did not use.

Richmond H. Dunsmuir  
for Orr.

Special Statement

No 3.



Statement showing the amt. of necessary expenses on mill to keep it in running order after Hambleus purchase Sept 15 1882 down to July 12<sup>th</sup> 1884.

1882				
Octo. 12 <sup>th</sup>	To amt paid W. Smith his acct. see Sept	1.25		
" "	" " " G. V. Fleenor. for driver & materials	4.66		
Decr.	" " " W. J. Miles " work on race	2.50		
Jan'y 1883	" " " H. Augley for Co's	10.00		
Since Sept 1882	" " " John Good " " " & Co	2.50		
Mr. 15 <sup>th</sup> 1883	Am't Expenses to March 15 <sup>th</sup> 1883.	\$20.91		
1883	To amt paid Jeff Miles for work on race	4.00		
Sept 15 <sup>th</sup>	" " " John Miles " "	2.00		
"	" " " Linn Wynn " "	3.00		
Apr 9 <sup>th</sup> 1883	" " " Wm. P. Dickman acct	6.07		
"	" " " Woodward's statement	14.42		
	Total Expenses for 6 mo. Ending 15 <sup>th</sup> Sept 1883.	\$29.49		
1884				
July 12 <sup>th</sup>	To amt paid Hambleus for acct	60		
"	" " " Byron for Emory dress	4.00		
Admitted	" " " " " " Platform Scales	18.35		
Admitted	" " " bal Richards acct	1.30		
	Am't Expenses to July 12 <sup>th</sup> 1884.	\$24.25		



1883

Mar. 15<sup>th</sup>

Arit. Expenses to date Mar. 15<sup>th</sup> 1883 \$20 91

Sept 15<sup>th</sup> 1883

"

"

"

Sept. 15<sup>th</sup> 1883

29. 49

July 12<sup>th</sup> 1884

"

"

"

July 12<sup>th</sup> 1884

24. 25

" allowed for 1 y. & 10 mo.

15. 00

Total expenses to July 12<sup>th</sup> 1884. . . . \$89. 65



James. W. Orr in account with the mill  
Property since the Sale to Hamblew by Turner  
Sept 15<sup>th</sup> 1882, down to July 12<sup>th</sup> 1884. Cr Dr.

Mr. 15 1883 To amt tolls recd to March 15<sup>th</sup> 1883. \$165.44

See Statement  
H. O By amt p'd for repairs " " \$20 91  
" " allowed for services Supri. 5 00 25 91  
\$139.53

1883 Interest on this sum to Sept 15<sup>th</sup> 1883 4 18  
\$143.71

Sept 15 To amt tolls recd to Sept 15<sup>th</sup> 1883 165 44

Total Debits Sept. 15<sup>th</sup> 1883. \$309.15

See Statement  
H O By, amt Expenses to Sept 15<sup>th</sup> 1883 \$29 49  
" " allowed for services 5.00 \$34 49  
\$264.66

To Interest on this sum to July 12<sup>th</sup> 1884 13 10

To amt tolls recd for Woodward's Depts. 275.72  
\$553.48

By, amt, p'd Expenses to July 12<sup>th</sup> 1884 \$24. 25<sup>-</sup>  
" allowed for services Supri. 5 00 29.25<sup>-</sup>

Total amt, net tolls from Sept 15<sup>th</sup> 1882 to July 12<sup>th</sup> 1884. \$524.23

By  $\frac{3}{4}$  net tolls this sum 393.17 $\frac{1}{4}$

Amt due Hamblew on acct tolls " " \$131.05 $\frac{3}{4}$

Admitted Also by 100 for the balance due See above page 10 7.00  
\$138.55 $\frac{3}{4}$



This statement is accepted to  
for reason set out in memo  
Aug 27<sup>th</sup> / 88 L. M. J. R. R. R.

Statement  
D. J. R.



Statement showing the standing of the  
Mill property as regards expenditures and  
receipts from Decr. 12<sup>th</sup> 1868, to Sept 15<sup>th</sup> 1882.

Admitted	To amt. Taxes for year 1868 pd by Orr	1.92
Agreement "A."	" " pd by Orr for Darter Mill Apr 1 <sup>st</sup> 1869	300.00
Admitted	" " Interest thereon to April 1 <sup>st</sup> 1870	18.00
"	" " pd Taxes for year 1869. by Orr	1.75
Agreement "A."	To amt pd by Orr in Decr. 12 <sup>th</sup> 1868	1.03
	Total amt expended down to Apr. 1 <sup>st</sup> 1870	\$330.15
Agreement "A."	By amt tolls recd by from Darter Mill " "	80.00
	To Interest thereon to 15 <sup>th</sup> 1873. ....	\$250.15 50 61
Admitted	" amt Taxes for years 1870, 1871 & Int. 1.50	19.11
Agreement "A."	" " pd for new Mill "acct O." by Orr, Aug. 15 <sup>th</sup> 1872	2280 17
	" " Interest thereon to Aug. 15 <sup>th</sup> 1873	136 81
	" " pd for repairs for year 1873 See Statment "K."	3.83
	Total amt expended down to Aug. 15 <sup>th</sup> 1873.	\$2762.65
1873.	By amt. tolls \$408. <sup>00</sup> with half interest \$12.24	420.24
	To Interest on this sum to Aug 15 <sup>th</sup> 1874. ....	32342.44 140 54
	To amt for repairs for year 1874	17.38
1874	By amt tolls for year ending Aug 15 <sup>th</sup> 1874	\$2500.36 420 24
	To Interest on this sum to Aug. 15 <sup>th</sup> 1875	2080.12 124 80
	" amt expended for repairs " "	17.37
1875-	By amt. tolls for year 1875. ....	\$2222.29 420 24
	Carried forward - - - -	\$1802.05



	Amount brought forward	\$1802 05
	To amt Interest on same to Aug. 15 <sup>th</sup> 1876	108 12
	" " for repairs for year Statement " 1876	28 83
1876	By amt tolls for year ending Aug 15 1876	\$1939.00
	To amt Interest thereon to Aug. 15 <sup>th</sup> 1877	420 24
	" " repairs for year end. " "	\$1518.76
1877	By amt, tolls for year end. " "	91.12
	To amt, Interest on this sum Aug 15 <sup>th</sup> 78.	87.49
	" " for repairs &c to Aug 15 1878	\$1697.31
1878	By amt, tolls for year ending "	420 24
	To amt Int. to August 15 <sup>th</sup> 1879	\$1277.13
	" " for repairs for year - 1878	76.62
1879	By amt, tolls for Year ending Aug 15 <sup>th</sup> 79	34.16
	To amt Int. to August 15 <sup>th</sup> 1880	\$1387.91
	" " for repairs to " "	420 24
1880	By amt, tolls for Year " 1880.	\$967.67
	To amt Inter, to Aug. 15 <sup>th</sup> 1881.	58.06
	" " bid for repairs to " "	52.97
1881	By amt tolls for Year ending Aug 15 1881.	\$1078.70
	To amt Int. thereon to Sept. 15 <sup>th</sup> 1882	420 24
	" " for repairs to " " "	\$658.46
1882	By amt tolls 1 year & 1 mo. with Int.	39.50
Sept 15	amt, over expenses. Sept. 15 <sup>th</sup> 1882	75.08
		773.04
		420.24
		\$352.70
		21.16
		98 87
		\$472.83
		420 24
		\$52.59
		3.42
		279.15
		\$335.16
		455.26
		\$120.10



By amt, received over Expenses to Sept 15/882 \$120.10  
" " " by Am for old mill stones & Interest 40.90  
Total amt due Mill property over Rep's, &c. \$161.00  
For distribution . . . . .



This Statement is accepted by Defendant over.

- 1 Because it gives the Mill property, Credit for interest on the rents which is wrong the rents should only be credited at the

Statement No. 33

This Statement as each item is accepted to  
see explanation in free in memo. Aug 27/84  
Meyers & Co.



Statement showing the cost of  
 permanent improvements which  
 have been put on the mill property.

	Amt. pd by Orr. to Vanhus for carpenters work on new mill house Spring of 1875	\$300.00
	Amt pd by same to Venable for plastering	54.50
	" " " " for painting, same to Gus Talley	30.00
	" " " " for paints. . . . .	26.00
	Total Cost of Millus house (say June 1 <sup>st</sup> 1875.)	\$410.50
	Interest to September 15 <sup>th</sup> 1882. . . . .	179.59
	To amt. pd to Vanhus for building granary - 1877	100.00
	" Interest thereon to Sept. 15 <sup>th</sup> 1882	30.00
		\$720.09
Admitted	By Amt recd from Gillespie for Rents M. house	29.50
	Total Cost of permanent <sup>improvements</sup> Sept. 15 <sup>th</sup> 1882. . .	\$691.09

Of the above sum James &  
 Wife should pay as life tenants  
 the sum of (as of Sept 15<sup>th</sup> 1882) \$86.02



Statement

"P. I."

Permanent Improvement



The Mill Property in account with Wm. L. Turner. Dr

	To amt, with Int to Apr. 1 <sup>st</sup> 1870. pd on D. mill board	8 48
	" " Interest thereon to Aug 15 <sup>th</sup> 1873	1. 71
1873	" " pd of average work on race "	80
		\$10. 99
	To Int on this sum to Aug. 15 <sup>th</sup> 1874	. 65
1874	To amt pd on repairs for year "	80
		\$12. 44
	To Int on this sum to Aug. 15 <sup>th</sup> 1875	. 74
1875	To amt pd on Expenses for year "	80
		\$13. 98
	To Int. on this sum to Aug 15 <sup>th</sup> 1876	84
1876	" amt, pd on Expenses for year 1876	80
		\$15. 62
	To Int, on this sum to August 15 <sup>th</sup> 1877.	94
	To. amt pd on Expenses this year. "	14. 80
1877	By amt, tolls recd. See Aco, page 7....	\$31. 36
	To " dues mill property Aug. 15 <sup>th</sup> 1877.	105. 06
	Interest on this sum to Aug. 15 <sup>th</sup> 1878	\$73. 70
		4 43
1878	To amt pd on average Expenses "	78. 13
		80
	Interest on this sum to Aug. 15 <sup>th</sup> 1879	\$77. 33
		4 64
179	To amt pd on Expenses " "	\$81. 97
		80
	To Interest on this sum to Aug 15 <sup>th</sup> 1880	81. 17
		4. 87
1880	By amt pd on Expenses " "	\$86. 04
		80
	Amount forward....	\$85. 24



1880	Am't brought forward	85.24
	Interest on this sum to Aug 15 <sup>th</sup> 1881	5.12
1881	By am't pd on Expenses this year "	\$90.36
	Interest to Sept 15 <sup>th</sup> 1882 . . . .	19.80
	By am't pd on Expenses this time —	\$70.56
1882	" " 1/4 161\$ net toll to Sept. 15 <sup>th</sup> 1882	4.58
		\$75.14
		80
		\$74.34
Sept 15 <sup>th</sup>	Am't due from Turner to Mills to square...	40.25
26 <sup>th</sup> September		\$34.09
	I think when from Mr. Mills square the amount as the mill is indebted to Mr this sum \$3.12 and amount to Mr.	

Statement  
"S."



The Mill property in account  
with James W. Orr.

Admitted	To amt. pd Taxes for year 1868	1 92
do.	" " " for Carter Mill Apr. 1 <sup>st</sup> 1869	300 00
	" " Interest thereon to Apr. 1 <sup>st</sup> 1870	18 00
Admitted	" " pd Taxes for year 1869	1 75
1870	By amt. tolls rec'd from Carter Mill, Apr. 1 <sup>st</sup> 1870	\$321.67
		80 00
		\$241.67
	To amt. Interest on this sum to Aug. 15 <sup>th</sup> 1873	48.90
	" " pd Taxes for years 1870-1872 with \$150 Int.	19.11
Admitted	" " " for erecting new mill Aug. 15 <sup>th</sup> 1872.	2280.17
	" " Interest on this sum to Aug. 15 <sup>th</sup> 1873	136.81
	" " pd of average repairs " " "	25 03
1873	By amt. rec'd tolls, 408. & half Interest 12.24	\$2751.69
		420 24
		\$2331.45
	To Int. on this sum to Aug. 15 <sup>th</sup> 1874	139.89
	" amt pd of repairs for year " "	16 58
1874	By amt tolls with Int. rec'd Aug. 15 <sup>th</sup> 1874	\$2487.92
		420 24
		\$2067.68
	To Interest on this sum to Aug. 15 <sup>th</sup> 1875	124.06
	To amt pd on Expenses for year " "	16.57
1875	By amt. tolls rec'd this year	\$2208.31
		420 24
		\$1788.07
	To Int. on this sum to Aug. 15 <sup>th</sup> 1876	107 28
	To amt pd on Expenses for year. " "	28 03
1876	By amt tolls rec'd " " "	\$1923.38
		420 24
	Amount forwards...	\$1503.14



1876	To Arnt Debits brought forward	\$1503.14
	To Int on this sum to Aug. 15 <sup>th</sup> 1877	90 18
	" arnt pd on Expenses for Year "	72.69
		\$1666.01
1877	By arnt tolls recd for this Year "	315 18
		\$1350 83
	To Int. on this sum to Aug. 15 1878	81 05
	To arnt pd on Expenses this year "	33.30
		\$1465.24
1878	By arnt, tolls recd this year "	420 24
		\$1045.00
	To Int. on this sum to Aug 15 <sup>th</sup> 1879	62.70
	To arnt pd on Expenses " "	52.17
		\$1159.87
1879	By arnt tolls recd this year "	420.24
		\$739.63
	To Interest on this sum to Aug. 15 1880	44 37
	To arnt pd on Expenses this year "	74.28
		\$858.28
1880	By " tolls recd this year " "	420.24
		\$438.04
	To Interest on this sum to Aug 15 1881	26 28
	To arnt pd on Expenses this year "	79.07
		543.39
1881	By arnt tolls recd this year "	420 24
		\$123.15
	Interest on this sum to Sept 15 1882.	8.00
	To arnt pd on Expenses to " "	278.35
Statement "M.	" " $\frac{3}{4}$ 161\$ net income to Sept. 15 1882	120 75
		\$530.25
	By arnt tolls recd to Sept 15 1882	\$455.26
1882	" " recd for old Mill Stones & Int	40 90
		\$496.16
Sept 15 <sup>th</sup>	Arnt due on from M. Property to Square.	\$34.09



Statement  
Q



Statement showing the amount of necessary repairs & expenses on mill property to keep it in running order after it was started Aug. 15<sup>th</sup> 1872, to Sept 15<sup>th</sup> 1882, time of sale to Hamblen.

J. Wynn's Deft	To amt pd, by Orr. to J. Wynn, work on race	28.50
"	" " " " " Same for work on troughs &c	10.50
Deft's of	" " pd balance for work on race to me	6.75
to B. Miles	" " " " " " " " " "	2.00
Same Deft	" " " by Orr. to C. P. Miles work on race	10.00
W. P. Miles	" " " " " W. P. Miles " "	7.50
J. Good	" " " " " J. Good " "	7.50
Jeff. Miles	" " " " " Jeff Miles " "	6.00
John Bergan	" " " " " John Bergan " "	50
John Miles	" " " " " John Miles " "	9.75
"	" " " " " Baxter Harrison " "	1.50
Total pd for work on race & Aug. 15 <sup>th</sup> 1872 to Aug. 15 <sup>th</sup> 1882		\$89.75
Average amt, for each of the ten years		\$8.97½

1873

Aug. 15 <sup>th</sup>	To amt average payment on race	8.97½
Wm. F. Orr's Deft	" " allowed for Wm. F. Orr services — (Ludgion)	9.00
Agreed	" " Taxes for Year 1873.	7.86
Total amt for repairs &c down to Aug. 15 <sup>th</sup> 1873.		\$25.83½







1878

Aug 15 <sup>th</sup>	To amt. brought for ward....	\$25.98
See Depo	" " pd by Orr to R. Vanhus repairs	5.00
" "	" " " Same " H. G. Fleener "	1.00
Admitted	" " " " Hambleton & Orr acct	2.11

1879 Total for repairs &c for year 1878... \$34.16

Aug. 15	To amt average payment on race	8.97
Admitted	" " Taxes for year 1879	18.00
See Depo	" " pd by <sup>Orr</sup> to R. Vanhus for repairs	5.00
Admitted	" " " by Orr. to W. S. Brownell his acct.	8.00
See Depo	" " " Same " John P. Myers " "	7.00
Admitted	" " " " Hambleton & Orr acct	1.00
" "	" " allowed Orr for services supervising &c	5.00

1880 Total expenditures for year 1879 \$52.97

Aug. 15 <sup>th</sup>	To amt average payment on race - -	8.98
Admitted	" " Taxes for year 1880	18.00
Depo.	" " pd John Hall his acct by Orr	2.00
Admitted	" " " W. L. Byington " " "	8.10
Depo	" " " John P. Myers for work on dam	16.00
" "	" " " R. Vanhus on his acct	5.00
" "	" " allowed Orr for services in superintending	10.00
Depo	" " pd by Orr. John P. Myers his acct.	7.00
	Total expenses for year 1880. ....	\$75.08



1881

Aug 15 <sup>th</sup>	To amt average payment on race.....	8.98
Admitted	" " Taxes for Year 1881.....	14.00
Depo.	" " pd John Nym bal on acct by Orr.	7.50
"	" " " R. Vanhuiss " " " "	5.00
"	" " " W. S. Brownell " " " "	1.75
"	" " " Geo. V. Fickner " " " "	1.75
"	" " " Same " " " "	25
"	" " allowed Orr for hauling sea goods Depo	19.25
Admitted	To amt pd by the same on Depo for repair	8.00
Depo.	" " " James Miller " "	8.00
"	" " " " " " " "	8.00
Depo.	To amt by Orr. Richmond on his acct	1.32
Admitted	" " " " Hambleton Orr bal acct	3.2
"	" " " T. H. Denny his acct	4.00
"	" " " Hambleton Russell their acct	75
"	" " allowed Orr for services supervising &c	15.00

1882 Total expenses &c for Year 1881. \$98.87

Sept 15 <sup>th</sup>	To amt average payment for work on race	8.97
Admitted	" " Taxes for Year 1882,	11.62
See Depo	" " pd by Orr W. A. Smiths his acct	10.75
" "	" " " Same W. S. Brownell for B. metal	4.75
	amt forward: - - -	\$36.09



# Condensed Statement. . . .

1873	Total expenses for repairs for year ending Aug. 15	\$ 25. 83.
1874	" " " " " " Aug 15/874	17 38
1875	" " " " " " 1875.	17 37
1876	" " " " " " 1876	28 83.
1877	" " " " " " 1877	87. 49
1878	" " " " " " 1878	34. 16
1879	" " " " " " 1879	52. 97
1880	" " " " " " 1880	75 08
1881	" " " " " " 1881	98 87
1882	" " " " " " 1882.	279. 15
Grand total expenses for repairs to Sept. 15/882.		\$ 717. 13

Of above Sum Turner pd. \$ 41. 00

" " " Orr " \$ 676. 13

Add for services rendered, etc. 1. 30

"R. E."

This statement is accepted to be correct  
 at present on it - but our members  
 date. Aug 27/84 Morgan & Williams







	Amount Debits forward	\$2568.37
	Lo Interest thereon to Aug. 15 <sup>th</sup> 1875	154.10
	" Amount pd for Miller House	410.00
	" Average amt Expenses this Year	79.61
1878	By amt held out this year	\$3212.08 408.00
	Lo Interest thereon to Aug 15 <sup>th</sup> 1876	\$2804.08 168.24
	" average Expenses this Year	79.61
1876	By this amt held out this year	\$3051.93 200.00
	Lo Interest thereon to August 15 <sup>th</sup> 1877	\$2643.93 158.63
	" Average Expense this Year	79.61
	" Turners proportion of Granary, as Perm. impro.	12.45
1877	By amt held out this year 102 out amt held out.	\$2894.62 36.00
	Lo Interest on this sum <sup>to</sup> this date Aug. 15 <sup>th</sup> 1878	\$2588.62 155.31
	" Average Expenses this Year.	79.61
1878	By amt held out this year	\$2823.54 408.00
	Lo Interest on this sum to Aug. 15 <sup>th</sup> 1879	\$2415.54 144.93
	" amt average Expenses this Year.	79.61
1879	By this sum held out this year	\$2640.08 200.00
	Lo Interest on this sum to Aug 15 <sup>th</sup> 1880	\$2232.08 133.92
	" amt average Expenses this Year.	79.61
1880	By this sum held out this year	\$2445.61 200.00
	Amount carried forward...	\$2037.61



	Amount Debts brought forward	\$2037.61	
	To this sum Interest on amt, to Aug. 15 1881	122.25	
	" " " Average Expenses this Year	79.61	
1881	By amt told me to pay	\$2239.47	
	To Interest on this sum to Sept 15 1882	\$1831.47	
	" " " Average Expenses to Sept 15 1882	119.14	
	" " " Average Expenses to Sept 15 1882	79.61	
	By amt told me to pay to Sept 15 1882	\$2030.32	
	" " " Paid for Mill Share etc	\$442.00	
1882 Sept	" " " " Paid to Miller & Co	46.90	
	" " " " Paid to Miller & Co	29.00	516.90
	Bal. due, Turner should share 1/4.	\$1518.32	
	amt due Orr from Turner...	\$379.58	



Special Statement

No 2.



It is agreed without asking further proof That Account "O," filed with Defendants answer as amended by adding to it the following items. To wit one Serv. at \$15.00 Two Stoves at \$21.00 \$14.00 for additional work on Road and \$6.00 for damages paid to Mrs Hyman. on dam. shall be taken as the costs, of the mill.

That is That the repairs of the Old or Darton Mill cost. \$ 300.00 paid April 1<sup>st</sup> 1869.

That the building and completing of the New Mill, dam &c. cost. \$ 2280.17 paid August 15<sup>th</sup> 1882.

It is admitted that the tolls of the old mill after deducting Millers share + Mrs Hyman share was \$80.00. Due as of April 1<sup>st</sup> 1870.

It is admitted that the tolls of the New Mill after deducting, the Millers share amounts to \$408.00 per annum. upto 15<sup>th</sup> day of Sept 1882

It is admitted that H<sup>m</sup> L Turner paid out, items<sup>no</sup> 12. = \$8.00 no 13 = \$6.00 no 14 = \$3.00 no 15 \$5.00 and no 22. = \$10.00 as charged in his account.

It is further admitted that he paid item<sup>no</sup> 17. = \$10.00 charged in his account, but it is not admitted that said item is a proper charge in his favor against the mill

No 17

It is admitted that Mr Orr received \$29.00 from William for rent of the New Millers house on said lot. date. Sept. 1882



It is admitted That J<sup>r</sup> W<sup>r</sup> Orr sold 1 set of the  
Mill Stones of the old Mill in 1882. Sept. for \$4000.  
While these things are all admitted nothing is  
admitted as to their legal effects. The admissions  
being only to avoid taking of proof.

July 2<sup>nd</sup> 1884

Henry J. Morgan  
A. L. Pidemore } For Plff  
Richmond & Duncan  
for Defendant J<sup>r</sup> W<sup>r</sup> Orr.

B. L. Warbleton  
vs  
Agreement  
James W. Orr

Filed July 2, 1884  
per H. W. Galt  
Clerk

(A)



This Indenture made the twelfth day of  
December in the year of our Lord one thousand  
eight hundred and eighty eight be-  
tween James W. Orr of the county of Lee and  
State of Virginia of the one part and  
William L. Turner & Feha C. his wife of the  
same county and State of the other part  
Witnesseth, that the said James W. Orr for  
and in consideration of the sum of  
five hundred dollars to him in hand  
paid, the receipt of which is hereby  
acknowledged for the lands hereafter  
conveyed which is contained in a title  
bond from Ables Wynn to Ailey Wynn  
and William L. Turner, said land con-  
taining all the interest which said Ables  
Wynn had as one of the heirs at law in  
an undivided tract of land belong-  
ing to John Wynn deceased, and the said  
lands having been since divided, the  
said covers that part called the mill  
lot, hath and by these presents doth here-  
by grant, bargain, sell, alien, enfeoff,  
convey and confirm unto the said Wil-  
liam L. Turner and Feha C. Turner his  
wife so long as they both or either of  
them shall live, the undivided one  
fourth of the said Mill lot, or tract



of land with its appurtenances, and one fourth of the toll of the Mill, also the exclusive use of the house and garden, he now accedes to have and to hold the said undivided one fourth of said Mill lot, or tract of land with its appurtenances to the said William L. Turner and Fida E. Turner his wife, so long as they both or either of them shall live, and the said James W. Orr, for himself and his heirs Executors or Administrators doth covenant that he will forever warrant and defend, the said undivided one fourth of the said Mill lot or tract of land, against the lawful title claim or demand of all persons what soever in law or equity. In testimony whereof the said James W. Orr hath hereunto set his hand and seal this the day and year first above written, interlined before signed,

James W. Orr Seal

Attest.

David <sup>his</sup> Orr.

S. B. Orr.

Virginia, Lee County Court Clerk's office  
Sept. 15<sup>th</sup> 1882. The foregoing Indenture of bargain and sale for land, bearing



date December 12<sup>th</sup> 1868, between James  
H. M. of the first part, and William L.  
Lumner and Leba C. his wife of the  
second part, all of Lee County Virginia,  
was this day filed in this office and  
admitted to record,

Teste John R. Gibson Clerk

Copy

Teste John R. Gibson Clerk



Copy of  
James H. Orr

Platt's Exhibit  
A

See for this copy 504



This Deed made the 5<sup>th</sup> day of September 1852  
by and between William L. Swain Clerk & Thomas  
his wife of the one part and Charles L. Hamblen of  
the other part witnesses that whereas the said Charles  
of the first part for and in consideration of the  
sum of five hundred dollars to them in hand  
paid the receipt whereof is hereby acknowledged  
they the parties of the first part doth by these presents  
grant bargain sell and convey unto the said Charles  
Hamblen one fourth part of a certain lot or parcel  
of land situated in the County of Virginia about  
two miles west from Genevaville more known as James  
McMull lot and one fourth the tolls of said tract  
which has been collected since Dec 12 1808 or such  
tolls being assigned thereof so long hereafter as  
for and during the life of the parties of the first part  
or the survivor of them and which said life estate or  
tolls are fully set forth and described by the deed of  
James McMull bearing date December 12 1808 and  
now of record in the Clerk's office of the County of Virginia  
to which reference is here made for more specific  
description of said lot or tolls also thereon and the  
parties of the first part covenant that they will wa-  
rant generally for and during their natural lives  
the said lands tolls hereinbefore set forth and de-  
scribed to the said Charles L. Hamblen or the survivor of  
said parties the following signatures and seals  
this the day and year first aforesaid

W. L. Swain  
Charles L. Hamblen



Exhibit

Lee County Court  
J. D. & S. Hyatt Commission in Chancery for the  
County Court of Lee County do certify that the  
Deputy A. Dummer whose name was subscribed to the  
foregoing deed bearing date the 8<sup>th</sup> day of Sept. 1882  
he personally appeared before me in my County  
Court and acknowledged the same to be his  
act and deed for the premises therein mentioned  
and that the said Deputy A. Dummer wife & J. D. Dummer  
was examined by me privately and apart and apart  
from her husband and having the reading fully  
explained to her she the said Deputy A. Dummer does  
acknowledge that she had willingly executed the same  
and does not wish to retract it given under  
my hand this 9<sup>th</sup> day of September 1882.

J. D. & S. Hyatt  
Commission in Chancery

Virginia Lee County Court Clerk's Office Sept 22<sup>nd</sup> 1882  
The foregoing deed bearing date Sept 8<sup>th</sup> 1882  
between W. A. Dummer and Phoebe E. his wife of the  
first part & C. L. Hamilton of the second part  
of Lee County, Va. was this day read over  
to and before the Certificate of J. D. & S. Hyatt  
a Commission in Chancery for Lee County Court Va.

Teste John Robinson Clerk



L. R. Smith  
From B. Co. of Dec.  
to L. R. Smith

---

Pltffs.  
B

See this copy



White Sulphur

Barren, Camp, Tenn. Mar 11<sup>th</sup> 77

Mr. J. H. Orr.

Dear Brother,

With feelings of friendship  
and anxiety I again address you. After an arduous and  
fruitless and yet not entirely barren at our last attempt.

But have received no answer from you. I suppose you  
may not have gotten my letter, and consequently  
do not know my place of address, I have thought  
to write you again, but I am very anxious to hear  
from you. We are very anxious.

My acquaintance with you (though of not much  
duration in the beginning) has grown with time  
and circumstances and has turned into a regard which  
I have for no other man. I sometimes think it is  
very similar to that which existed between you and  
Johnston. I feel as if you & I know as much  
of each other as I do for anyone. Write to me on the  
receipt of this. Give me such information as you may  
wish I would like to hear. How is your health and  
the health of your family and our relatives abroad.  
I suppose you were pleased with the season so far.  
I am not in business generally but as you know  
you will be here particularly. With the season so  
far so far and we are living in the house. I have  
not been to the house yet. I have not been to the house yet.  
But they are all well. Love you all.  
I have your secret. Love you all. I have  
but not lost how it is. I have.

I believe, perhaps, you would like to know  
how we are getting along. Still after a business and  
a severe journey we are at our place of dwelling.







then a shout of rejoicing, bursts forth, some come  
to the altar for prayers, a few obtain peace, and a few  
join the Church. But as yet no general ingathering  
through the Church seems to be looking for a sweeping  
revival. God grant to hasten it in his time.

Pray for us. I hope you are pleased with your  
preacher. How is he getting along is the pleasure  
of the Lord prospering in hands, have you got a  
good religious work on Jonesville Circuit. How  
is Brother Baldwin getting along on his Circuit. Hoping  
to hear from you shortly, I will say in conclusion  
we are both well. My address is White Side  
Marion County Tennessee

Yours respectfully,

J. C. Pate -

J. A. G. Hyatt Clerk

James H. Don  
on a copy of letter to  
you & determine it as

Conflicts & Engagements

March 15<sup>th</sup> 1883

J. A. G. Hyatt  
Clerk



Pikeville Blount County, Tenn.  
Mr. James W. Orr.

Dear Brother,

We received your letter a few days ago, and was glad to learn that you were well, and from any thing to the contrary in your letter, doing well. We are also both well, and we think doing tolerably well. You write you contemplate putting up the mill this spring and summer, that you will build the house very soon. That will be all right we think, for if it is never begun, it will never be completed. And it does seem to me, that such valuable property should not be idle. As to my ability to assist you in building the mill, I will just say a few things. I wrote you last May, that, I thought I would be able to assist you some last fall, and if times had remained as they were when I wrote, I have no doubt that I could have furnished you with two or three hundred dollars. But we had a great Rail Road crash. The contractor and builder of the Alabama and Chatanooga Rail Road broke, and is behind with the people and State perhaps a million and a half of dollars. He was largely indebted to all the business men, farmers, mechanics and laborers, and could not or did not pay them, and so, as usual, in such cases the preacher was among the first to feel it, so I failed to realize my expectations. Now it will be in the future I know not, but from all lights before me, I think I may be able to assist you some this year, likely two or three hundred dollars. I would like very much to see you, so we could talk together, and on more to better purpose. I would have visited you after conference, but Mrs. Turner was not very well when



at home, and she did not want me to stay so long. I  
think perhaps it would have caused me to have missed  
the first board on my arrival, which would have been  
a great disadvantage, and I decided not to go, and  
not to go there without my horse, and to consider the situation  
it would have been very troublesome and unpleasant to have visited  
you at that time, but I will be able to see you and I will not have  
in reference to that business with Mr. Thomas. All I can say  
is this, if I could be there I would settle it now, I would  
send it by mail, but they are so uncertain I am afraid to  
risk it. But you can tell him to come sometime with me, I  
will not fail and I will then pay him all, use your influence  
to quiet him so far as you can, and if he has announced  
any further proceedings, which are likely to bother you,  
trouble you as much as we tell him to stop it, and I will  
do it in a few days before or immediately after conference, and  
it will be as soon, perhaps, as he would be likely to get it by  
other means, arrange him the best you can and I will  
make it all right when I get there. We have been  
talking about locating this fall, but we are not fully deter-  
mined on yet. I think if I could be settled there and we  
were to put our hands together, we would achieve great  
things, for we have about a thousand, and we shall put  
ten thousand to flight. Mr. Thomas wants me to have my  
share of the things. I have written that you had much to do  
to your time with the exception of the horses in the lot, so  
we are all right, if you left nothing but the horses out of your  
lot their contents in them, we are doing very well, and we  
do those contents to see how it is. We are well pleased with  
our success, the people are intelligent, kind and hospitable.  
The house supplied our wants beautifully and seems to prosper  
each other in kind attention and liberality. The weather  
is almost comparatively pleasant and light and warm.

delights to be able to be in your country. But still we have  
plenty to do. The nature of the work requires a large  
amount of pastoral visiting. We have a wide field of  
discrimination here which are all striving to do good,  
in our midst are the sectaries. I think before we meet, I  
will visit with all of them. We please not so much for sect, but  
for the sake of the communion of the kingdom. I think that  
I am making some advances in the service  
of the Lord and you getting along religiously. Don't forget  
in the bustle and confusion of office and business to  
be a man to do the one thing needed. I am sure you are  
and happy. Write to me immediately on the receipt of  
this, give me all the information that respects concerns me,  
and our business, and then everything else. You will  
know how to do it. But I must close, but we  
will meet upon the Lord, and part upon the Lord,  
and we will be ever active so as to move within the  
circle, and we will not materially care and be able to  
realize how good and how pleasant it is to be  
together in unity, that it is like to be  
satisfaction upon the earth, that you have upon the  
earth a new world: that must seem to Christ  
the present and on the day of tomorrow, and we  
will that it should be upon the mountains of Zion.  
May the Lord preserve his servants and his  
communion.

Yours truly,  
William L. Thomas  
I hope to go  
J. H. Smith



James H. Clark  
Lodge & Litchfield  
original filed  
Jm. H. Clark  
March 15-1883  
J. H. Hyatt  
clerk



The claim of Permanent improve-  
ments, as held by the ~~def~~ plffs  
in the Croft bill on the mill prop-  
erty is the construction of the new  
mill, including every necessary act  
to put it successful operation -

The repairs and expenses such  
necessary things as had to be  
done to keep it in operation

Morgan Prudence



C. L. Hamblew  
vs { X Bill.  
      { Differeces of  
      { Permanent im-  
      { provements  
J. W. Orr.

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Filed June 26<sup>th</sup> 1884



An account of the expenses paid by James W. Orr  
for repairing & improving mill property.

1869. +	For repairing & starting old mill!	300.00
1872 Jan	Paid Thos Baylor for 1233 ft $\frac{3}{4}$ in plank!	9.24
"	Same " 223 $\frac{1}{3}$ " $\frac{1}{2}$ " "	2.81
"	James Edwards " 472 " $\frac{1}{2}$ " "	7.08
"	Harvey G. Fleenor " 6000 Shingles	18.00
" 11"	Pink hiles for 3 dys work on foundation	1.50
" 16"	Same " 3 " " " "	1.50
" 15"	John Wynn " 1 " " " house	.50
" 16"	Same " 5 " " " "	2.50
"	Same " 5 " hauling with oxen @ 1.50 "	7.50
" 17"	Aley Wynn " John's work on house	2.00
" 19"	Pink hiles (per John) for work on foundation	1.25
+ " "	James Halles " " " "	2.15
" 20"	— Lines " " " "	1.25
Feb 1"	Leri Carnack for getting Cogs	3.00
" "	John Graham for work on foundation	23.00
" 6"	Rufus Leedy " " " house	4.25
" 12"	John Wynn " " " "	1.00
" 15"	Israel Garner for 10 dys work 2 on foundation 1 day hauling stocks & bal on house	5.00
" 16"	Pay for Mrs Wynn	.50
		394.03



1872.	Amount brought forward		\$ 394.03
May.	Paid Blake Hamblen for getting out cogs &c		3.00
"	" Pink Miles for painting shingles		3.00
"	" — Hines for shingles (one drawing knife)		1.25
"	" S. M. Laylor for — Hines for shingles		2.15
June 6 <sup>th</sup>	" L. D. Hines for lead on 5000 shingles jointed		14.10
" 8 <sup>th</sup>	" + — Cox to pay freight on lumrs to Rogersville		28.00
" 15 <sup>th</sup>	" + Same lead for hauling lumrs		19.65
" "	" for lumrs to A. & W. Livingston		96.50
" "	" B. F. Duncan for 66 lbs nails		5.94
" 28 <sup>th</sup>	" + Riley Stone for hatting cloth.		31.20
" "	" Same for elevator cups & rivets		4.85
July 2 <sup>nd</sup> .	" B. F. Duncan for 70 lbs nails & 4 hats.		6.56
" "	" John Wynn for packing up plank		2.00
" 3 <sup>rd</sup>	" — Mason for 2 dys work on race		1.00
" 5 <sup>th</sup>	" David Preston for 8 dys work about mill		4.00
" 6 <sup>th</sup>	" + Marcel Miles for hauling mill Irons & nails	+	8.96
" "	" + for 50 lbs finishing nails @ 8 1/2 cts	+	4.25
" "	" Cash to L. D. Hines for work on race & to pay hands		5.00
" "	" Elkanah Stewart for work on race (cash)	x	2.00
" 8 <sup>th</sup>	" Dixon Smith & Co at Bristol for mill Irons &c		125.54
" 10 <sup>th</sup>	" B. F. Duncan for 65 lbs nails @ 9 cts		5.85
			<del>765.82</del>



July 12"	Paid Elkanah Stewart for work on race (cash)	* 2.00
" "	" L. D. Hines for work on race "	1.50
" 13"	" Elkanah Stewart " " " (cash by long) *	.50
" "	" George Sullivan " " " (cash)	4.00
" 15"	" Eb Toe " " " (P <sup>r</sup> order)	2.50
" 18"	" Elkanah Stewart " " " bal due him *	3.75-
" 19"	" George Sullivan " " " "	2.35-
" 19"	" C. T. Duncan for 33 lbs nails	2.97
" "	" C. T. Harris " 37" "	3.08
" 22"	" L. D. Hines bal' in full of \$61.10 for work on race boarding hands &c.	52.60
Aug' 1"	" George Sullivan bal' for work on race	1.50
" 2 <sup>nd</sup>	" * Jos <sup>d</sup> J. Davidson for sawing lumber	44.57
Sept 19"	" John Thynn for plank 640 feet	8.00
Oct 9"	" * Riley Stone for paint for mill &c	11.50
" 9"	" Same " P. Miles work drying plank	1.00
" "	" Same " " " " "	3.00
" "	" Same for his work on mill &c	200.00
Aug 15"	" Same by note for " " " "	300.00
" "	" S. M. Taylor his account	413.72
" "	" * Tho <sup>s</sup> Hackler for Smithing	42.00
Nov 6"	" Wm A Orrs expenses after gageon	6.15-
" "	" Burnett for dressing lumbrs	12.00
Aug 1"	" Wm R Graham his account for lumber hauling &c at mill.	233.66
		\$2177.67



1872.	Amount brought over	\$2117.67
Aug 1 <sup>st</sup> 1872.	Paid S. M. Taylor for boarding Graham & boys while working at mill.	18.00
Decr 14 <sup>th</sup> 1873.	" + Wm R Graham for boarding hands working on dam,	9.75
Jan 6 <sup>th</sup> 1872.	" + Same his acct for work about mill & dam, &c	50.00
Oct & Nov.	" for making road around dam 1. 2	x 28.75
" " " "	" " Mill dam 1. 3	x 200.00
" " "	" " Pine lumber for mill gearing, hauling same &c,	100.00
		\$2524.17
Aug 15 <sup>th</sup> 1872.	Add for agreement for 15 <sup>th</sup> 1872, 2 Stones 21 <sup>st</sup>	36.00
" "	" additional work on road 14 <sup>th</sup> . Damages to Mr Hynes 6 <sup>th</sup>	20.00
		\$2580.17

James W Orr.  
Account for repairing  
mill building mill &c.

"O"



I do solemnly swear that from the information derived from  
my parents and the record of my birth as kept by them, and  
heretofore seen by me I was born on the 8 day of Novr. 1814  
so help me god.

Phile. E. Turner

I do solemnly swear that from information derived from my  
parents and from the record of my birth kept by them. I was  
born on the 23rd day of March 1811. so help me god.

W. L. Turner

Sworn to before me the 13 day of Aug 1884.

H. J. Mergenthaler



Evidence of  
the age of Mr  
L. Turnstone

---



His Indenture made this the Eighteenth  
day of November in the year of our Lord one  
thousand eight hundred sixty eight between  
Mary Hunt of the County of and State of Virginia  
of the one part and William L. Turner of the  
same County and State of the other parts witnesses  
that the said Mary Hunt found in consid-  
eration of the sum of seven hundred dollars to her  
in hand paid, the receipt of which is hereby  
acknowledged, for the land hereafter conveyed  
which is contained in a title bond from the  
Higgin to Mary Higgin and William L. Turner,  
said bond containing all the interest which  
said Mary Higgin had as one of the heirs at law  
in an undivided tract of land belonging to  
them deceased. And the said bond having been  
since ~~divided~~ divided the said bond covenants  
that part called the Mill lot, that and by these  
present words hereby grant, bargain, sell, con-  
firm, convey, and confirm unto the said  
William L. Turner and his heirs and assigns  
forever the undivided one half of the said  
Mill tract or lot of land with its appurtenances  
to have and to hold the said undivided half  
of said tract or lot of land with the appurtenances  
unto the said William L. Turner and his heirs  
and assigns forever in fee simple and the said  
Mary Hunt for herself and her heirs executors



~~and~~ administrators doth covenant that she  
will forever warrant, and defend the said un-  
divided half of said tract or lot of land against  
the lawful title, claim, or demand of all persons  
whatever in law or equity.

The conditions of this deed are such that if  
the said Alice Hunt doth pay unto the said  
William E. Hunt seven hundred dollars and  
also pay one half of building and repairing  
the mill on said lot or tract of land with  
lawful interest on the whole from date at  
the end of five years from this date, then this  
deed is to be and stand void, and the said  
Alice Hunt is to have, after paying the price  
one fourth of the toll from the mill from the  
time the mill is ready for grinding up to  
the end of five years, in testimony where-  
of the said Alice Hunt doth hereunto set  
her hand and seal the  
day and year first above written

Alice Hunt Seal

Attest

B. W. Carr

David Carr  
notary

Lee County Court, Clerk's office, the 27<sup>th</sup> day of Decem-  
ber 1868. This Indenture of bargain and  
sale for land, between Alice S. Hunt



of the first part, and William L. Turner of  
the second part was this day proved before me  
by the oaths of David Orr and James McLean  
the subscribing witnesses thereto to be the  
and deed of the said Wiley Grant, and the  
said deed, being duly stamped, is acknowledged  
to record.

John George McLaughlin Clerk  
Wm. R. Litchman Clerk



Wm. L. ...  
...  
...

Recorded in Dec  
Book 105 1868-8  
Bd. L. ...

"X"

...



This Indenture made the twelfth day of December  
in the year of our Lord, one thousand eight hundred and  
sixty eight between James W. Orr of the County of Lee  
State of Virginia, of the one part, and William L.  
Sumner & Faba E. Sumner his wife of the same County and State  
of the other part, It is remembered, that, the said James W. Orr  
for and in consideration of the sum of five hundred  
to him in hand paid the receipt of which is hereby  
acknowledged, for the lands hereinafter conveyed  
which is contained in a title bond from Ales Wynn  
to Riley Wynn and William L. Sumner, said land con-  
taining all the interest which said Ales Wynn had  
as one of the heirs at law in an undivided tract of  
land belonging John Wynn deceased, and the said  
lands having been since divided the said James W. Orr  
that he called the Mill lot hath and by these presents  
doth hereby grant bargain sell, give, convey  
and confirm unto the said William L. Sumner and  
Faba E. Sumner his wife so long as they both or either of  
them shall live the undivided one fourth of the said  
land with its appurtenances, and  
one fourth of the toll of the Mill also the exclusive  
use of the house and garden he now occupies to have  
and to hold the said undivided one fourth of said Mill lot  
a tract of land with its appurtenances to the said William  
L. Sumner and Faba E. Sumner his wife so long as they both or  
either of them shall live and the said James W. Orr  
himself and his heirs Executors or Administrators  
doth covenant that he will forever warrant and  
defend the said undivided one fourth of the said  
land to a tract of land against the lawful title  
claim or demand of all persons whatever.



In Law or equity, in testimony whereof the said  
James H. Orr hath hereunto set his hand and seal  
at the place and year first above written, intended  
witness my hand  
James H. Orr

James H. Orr  
J. H. Orr

Virginia, Allegheny County, San. J. Clerk, Dec. 12<sup>th</sup> 1882.  
The foregoing instrument, of bargain and  
sale for land, bearing date December 12<sup>th</sup> 1882,  
between James H. Orr of the first part and William  
L. Brown and Julia C. his wife of the second part  
of the County of Allegheny, in the State of West Virginia,  
is hereby acknowledged.

Witness my hand and seal  
this 12<sup>th</sup> day of December 1882.  
San. J. Clerk







This Contract made & entered into on this the  
day of September 1877, between James W Orr & Charles  
L Hamblen. Witnesseth that the said Orr & Hamblen  
are building on the said Orr's Mill lot, a Grainery,  
for their use, while engaged in the Mercantile  
business, at the cost of \$100.00, to be borne equally  
by said Orr & Hamblen, and when the said Orr &  
Hamblen cease to use said grainery as merchants  
the same is to revert to, and be the sole property  
of the said Orr, and he the said Orr is to then  
pay to said Hamblen a reasonable compensation  
for his interest in said building. Witness the  
following signatures and seals.

James W Orr (seal)  
C. L. Hamblen (seal)



James H Orr.  
with 3. Contract.  
C. L. Hamblen.

(O.P.2.)

Filed with Charles  
A Russell's deposition  
Feb 8th 1883.

H. C. Goslyn J. P.



An abstract copy from the reassessments of the lands in Lee County Va, 2nd or Jonesville Dist, for the years 1875 & 1880.

1875.

Orr James W. 40 acres, Wynn Branch, Hill tract, \$50 per acre, included for buildings \$1800.00, Total value \$2000.00.

1880.

"

Orr James W. 40 acres, Main road, Hill seat, \$35.00 per acre, included for buildings \$1200.00, Total value \$1400.00.

The above are correct abstracts. Copies.

Teste John R. Gibson Clerk  
of Lee County Court, Va.

An abstract copy from the Land book of Lee County Va, in the Jonesville Dist for the year 1868.

1868

Wynn Aley & Mr. Lerner 40 acres, Wynn branch. Total Value of the land and buildings \$332.80. Remarks - By deed from J. Wynn's Est.

The above is a correct abstract.

Teste John R. Gibson Clerk  
of Lee County Court Va.



James H. Carr.

3 Abstracts from Land &  
Brooks

Mr L. Sumner et al.

Filed, as evidence  
in the above styled  
cause. Feby 26 1883.

J. A. Hyatt  
Clerk



Jas W. Orr.

vs.

Wm L. Turner & al

Peff

Ditto

} In Chy

The defendants by one of their attorneys in this cause admit the fact, that the will so often referred to in the proof in this cause was executed in the years 1871 and 1872 and completed about August 1872.

Henry J. Morgan  
March 17 1883



Wm L Turner et als.

ads { Admission as to  
      { when mill was built.

James W Orr.

Filed March 17 1883.

J. A. Hyatt  
Clerk



Mr James W. Orr.

To Wm. L. Turner.

1	To 1/4 part mill tolls off Mill from Aug 72 to Aug 1873	158	50
2	" " " " " " " " Aug 73 to Aug 1874.	158	50
3	" " " " " " " " Aug 74. to Aug. 1875	158	50
4	" " " " " " " " Aug '75 To Aug 1876.	158	50
5	" " " " " " " " '76. Aug. 1877	158	50
Oct 76 to Oct 77 Credit by One years Toll of Mill		\$158.50	
6	To one fourth part mill tolls off Mill from Aug 77 to Aug 78	158	50
7	" " " " " " " " Aug 78 to Aug 79	158	50
8	" " " " " " " " Aug 79 to Aug '80	158	50
9	" " " " " " " " Aug, '80 To Aug, '81.	158	50
10	" " " " " " " " Aug, '81 To Aug, '82	158	50
11	To use of House and Lot from 1868 to 1876 Being 8 years at \$50.00 per year this sum	400	00
* 1868	12 " Boarding Gott & Son while at work on Mill race two weeks at \$200 per week each	8	00
* 1877	13 " Boarding Lynde, Wood & Hyman in 1877. one week and while working on Water wheel	6	00
* 14	" 300 feet of plank used in repairing troughs,	3	00
+ 15	" Oil Nails Leather &c.	5	00
1880	16 " Plank Nails Hauling &c. and work on Store House	50	00
* 17	" Cash paid Fitzg for re-moulding & dropping mill stones	10	00
18	" four fine Sows & pigs at \$10.00 each	40	00
+ 19	" House rent for Gillishin	8	00
20	" Rent of Store House	6	00
21	" Wood furnished mill for fuel 3 years at \$20. per year	60	00
* 1880.	22 " Cash handed over in gold in Aug. 1882	10	00
23	" " cash for 2 W over for old mill stones	40	00



Wm. L. Turner

vs. } Acct

James W. Orr

Filed June 26 1884  
J. A. Hyatt

" J  
" 3500  
2000  
1000  
6500

3250  
6250  
10115  
2000  
3615

2000



This Indenture made this the tenth day of  
December in the Year of our Lord one thousand  
eight hundred and sixty eight between Will-  
iam Turner of the County of Lee and State of  
Virginia, of the one part and James M.  
Turner of the same County and State of the other part  
Witnesseth that the said William L. Turner  
for and in Consideration of two thousand  
dollars to him in hand paid the receipt of  
which is hereby acknowledged for the sum of  
two thousand dollars which is contained in  
a title bond from John Mynor to Wiley Mynor  
and William L. Turner, said bond containing  
all the interest which the said John Mynor had  
in one of the pieces of land on an undivided  
tract of land belonging to John Mynor deceased  
and the said land having been divided in one  
part called that part called the Mill lot &c &c  
and by these presents doth hereby grant bargain  
sell alien except convey and confirm unto the  
said James M. Turner and his heirs and assigns  
forever the said undivided tract of land  
with its appurtenances to have and to hold  
the said Mill lot or tract of land with the  
appurtenances to the said James M. Turner and his  
heirs and assigns forever in fee simple  
and the said William L. Turner personally  
and his heirs Executors and Administrators



to the Covenant that he will forever warrant  
and defend the said Mill Lot or tract of  
Land against the lawful title claim or  
demand of all persons whatsoever in law  
or equity, One half of said Mill Lot or tract  
of Land is subject to the conditions set forth  
in a deed from Wiley A. Bunt to William  
L. Sumner. In testimony whereof the said William  
L. Sumner hath hereunto set his hand and  
seal this the day and year first above writ-  
ten

William L. Sumner

Attest

David B. Bunt

J. B. Bunt

Dee County Court, Clerk's Office, the 2<sup>nd</sup> day of June 1877.  
The foregoing indenture of bargain and sale  
for land between William L. Sumner of the one  
part, and James B. Bunt of the other part, both of  
Dee County Virginia, was this day proved before  
me by the oath of David B. Bunt and J. B. Bunt  
the subscribing witnesses thereto to be the act  
and deed of the said William L. Sumner, and  
the said deed being duly stamped is admitted  
to record,

John B. Bunt D. C. Clerk  
Dee Co.  
John B. Bunt Clerk



James H. Gm-  
From Copy of Deed  
Mr L. Currier

Recorded in Deed  
Book 10. 6 P 22

L. R. Currier

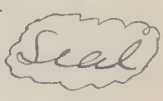
Fee for this copy 453



This deed made this the 26<sup>th</sup> day of Decr  
in the year 1870 between Alsey S Hurst of  
the first part and James W Orr of the second  
part, both of Lee County in the State of  
Virginia, Witnesseth that whereas by a  
deed executed by the said Alsey S. Hurst  
to William S Turner bearing date on the  
18<sup>th</sup> day of November 1868 and duly rec-  
orded in the Clerk's Office of the County Court  
of said County, The said Alsey did con-  
vey to the said Turner the undivided one  
half of the Mill tract, or lot of land in  
the said deed mentioned with the appur-  
tenances and in the said deed is contained a  
condition, That if the said Alsey should  
pay to the said Turner seven Hundred  
dollars and also pay one half of the  
expense of building and repairing the said  
Mill, with Lawful interest on the whole  
at the end of five years from the date  
of said deed, and the said Alsey should  
have after paying the Miller one fourth  
of the toll from the time the mill is ma-  
de for grinding up to the end of said five  
years: then the said deed should be void

Now therefore, in consideration of the  
premises, and of the sum of two hundred  
dollars to her in hand paid or received



to be paid by the said Orr, the said Sluey  
Hurst doth hereby convey and assign  
to the said Orr all her rights benefits  
and interests in the condition aforesaid  
and convey and transfer the same to him  
as fully and wholly as the same were reser-  
ved to her, Witness the following signature  
and seal. Silsby S Hurst. 

A Copy Teste J. A. Syatt clk

W. L. Stambler  
2 Copy of deed  
to 3 Stambler  
to James M. Orr  
James M. Orr



from time of seed to Lurner 12<sup>th</sup> Decr 1868.  
to time of commencement of building present mill  
which commenced running Aug. 15<sup>th</sup> 1872.

4 mo 15<sup>da</sup> Graham had charge of the mill from  
Aug 15<sup>th</sup> 1872, to January 1<sup>st</sup> 1873.

From Jan 1<sup>st</sup> 1873  
to Apr. 24<sup>th</sup> 1877  
4 y. 3 m. 23<sup>da</sup> Burnett 624 Bu grain per year  
a little more wheat than corn  
1400 Bu wheat @ \$4.00. 224 Corn @ 1 1/2¢ \$512.00  
1/3 off for Millers part. 170.66  
Net annual income from tolls. \$341.34

From April  
24<sup>th</sup> 1877, to  
Feby 10<sup>th</sup> 1879  
1 y. 9 mo. 16<sup>da</sup> Vandewater income from tolls  
would amount to from \$6. to 90¢  
average annual income \$75.00  
1/3 off for Millers part 25.00  
Net annual income from tolls \$50.00

Lurner & Wood  
From Feby  
10<sup>th</sup> 1879 to  
Nov 1<sup>st</sup> 1881  
2 y. 7 mo 21<sup>da</sup> Frank Wood - 622 1/2 Bu wheat and  
318 Bu Corn for first year. latter  
years not so good.  
622 1/2 Bu wheat @ 1¢ 622.50. 318 Bu corn @ 25¢ 79.50  
1/3 off for millers part. 260.50  
Net annual income of tolls \$521.00

Lurner  
10 mo 5<sup>da</sup> Occupied the mill as miller from Nov 1<sup>st</sup> 1881.  
to Sept 6<sup>th</sup> 1882.

Concussion.



Hamble purchased from Turner  
on the 18<sup>th</sup> day of September 1882

Woodwards, from the 6<sup>th</sup> September  
1882 to present.

Evidence proving  
rights of Mills.



Mr James W. Orr.

To L. S. Hamblen

Dr

1882.

To one fourth part nett toll of Mill from Sept 1882  
to Sept 1883.

158 50

" one fourth part nett toll of Mill from Sept 1883. to

June 1884 - " " " " " "

118 98



C. L. Hamblet

vs  $\frac{1}{3}$  account of  
tools.

James M. Orr



James W. Orr  
1880. L-Ann / Byington

Hale } For 400 bags at 2 cts

16' } By 100 lbs flour @ 2 1/2 cts

" order to H. & O.

" amt for recording Deed (to be done)

~~\$2.25~~

3.60

~~3.25~~

~~\$ 8.10~~

Qr.  
\$ 8.10



W. J. Byington  
Excty \$5.10  
J. H. Orr

This account  
is admitted  
by the Plffs as  
correct & just.

Wm  
Carr



Cornes H Orr.

1875- {	Lo Hambleton & Orr	Dr
Dec 24 {	2 Gallons for Mrs Burnett.	✓ 20
1876. {		
Jan 3 {	10- Penny nails	.83
" 15 {	5-3/4 Gallons for J. Burnett.	57
" 3 {	3 Pts oil " , Same	<u>20</u>
878 {		
June 24 {	1 Gal Lard oil	.75
" " {	10 lbs Lard	.83
Nov 15 {	repairing mill belt 1.00 and piece harness leather 20	<u>1.20</u>
1877 {		
Jan 22 {	20 lbs nails @ 5cts	1.00
1881 {		
July 31 {	1/2 Gal L. M. Oil	.52
		✓ 5.95



Hambleton & Orr  
vs { acct  
3 } \$5. 95-  
James W. Orr

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Admitted as correct  
just by the parties  
July 16<sup>th</sup> 1884.  
Hyatt Guir

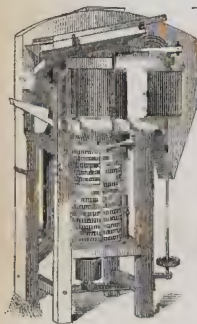
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S. HOWES.  
N. BABCOCK.  
C. EWELL.

Silver Creek P.O.  
now Money Order Office.

Silver Creek, N.Y. August 10<sup>th</sup> 1882



PATENTED FEBRUARY 23<sup>rd</sup>  
1864.

Hamilton and Orr  
**HOWES & EWELL, Successors to**  
BOUGHT OF  
**HOWES, BABCOCK AND EWELL**  
SOLE PROPRIETORS & MANUFACTURERS OF THE

**EUREKA SMUT & SEPARATING  
MACHINE**

AND DEALERS IN MILL FURNISHINGS OF EVERY DESCRIPTION.



2 <sup>2</sup>/<sub>2</sub> Yds 9 x x & a Bath cloth 3<sup>00</sup>  
7 <sup>4</sup>/<sub>4</sub> " 10 x x " " " 3<sup>50</sup>  
2 <sup>26</sup>/<sub>26</sub> " 7 x " " " 2<sup>46</sup>

6.17  
22.04  
6.54  
34.95  
6.95  
27.80  
5.47  
33.27

*Duplicate*

Less 20%

Making 18 <sup>1</sup>/<sub>4</sub> ft 30

Express box

Recd the Money for the above  
August 29/82 Howes & Ewell



Bolting Cloth  
Account

\$33.27

Admitted as just  
by the parties.  
July 16<sup>th</sup> 1884.

Hepatt Cour  
+



An account of expenses paid by James W Orr for  
keeping mill in repair from Aug 1872. to  
1882.

\$400.00

"P"



James W Orr  
acct of repairs  
on mill.

"P"



C. L. Hamblen  
against

Plff.

James W Orr.

Deft.

On x Bill.

The defendant insists that the construction of the Dexter mill, the building of the present mill including mill house, machinery, Dam &c, (Account "O") his services and the Miller's house together with the expense of running the mill since it started to the present time, are all repairs on the mill property, and that the store house is a permanent improvement, not being in any way connected with, or necessary to, the operation of the mill.

He also insists that the rents, or tolls, should be charged at the end of the year, and the entire expense of running the mill, including his services, <sup>since it started,</sup> should be averaged and credited annually.

The agreement in writing only admits the items in Account "O" to present, as it states, the necessity of proving them, that is that debt paid out for repairs of old or Dexter mill \$300 or as charged, and that he paid out for material work &c on new mill \$2280.17 as charged, Aug 15th 1872, and was not intended to cover the item of services by debt. The amounts charged for services are clearly proved to be reasonable and no effort made to disprove them & the Court should allow them.

There is no evidence in the cause to charge debt with rents for the Turner house & lot and plaintiff Hamblen in his bill page 2, states that "No Complaint is here made as to the dwelling house & lot attached



thereto that is now occupied and for several years past has been in the possession of your orator's (Plff's) Vendor. This is a waiver of all claim, if there had been any foundation for any.

The evidence shows clearly that the Miller's house did not cost more than is usually expended for Miller's houses in the Country, and not more than was necessary to secure the services of a good Miller & Command a good custom, which was certainly to the advantage of all parties concerned to secure & Command, and was a necessary appendage to the mill.

The defendant claims credit for the \$200 - paid Mrs Wynn. It was an expenditure for the benefit of the tenants in common, Turner alleges that the two deeds were one and the same transaction, he admits knowledge of the right of Mrs Wynn & no one denies that it was a judicious purchase and resulted advantageous to all parties concerned, but if mistaken in this, he claims he was substituted to her rights and <sup>thereby</sup> entitled to <sup>her</sup> one fourth of the nett tolls of the mill, while Turner was only entitled to one fourth of the residue, or  $\frac{1}{4}$  of  $\frac{3}{4}$  of said nett tolls, for the period from the time the mill started until the expiration of the five years.

Turner having tendered the issue of a settlement of individual matters between defendant & himself, by presenting his account marked "J" Can not now avoid such settlement, and the defendant insists that the settlement be made, but of course only of such items as are proven by the parties.

Defendant's <sup>such</sup> statements are necessary to meet the views here presented, and also a statement showing the result if Turner received, in addition to the one years tolls before 1876 admitted by him, five  $\frac{1}{4}$  per cent. time he took charge of the mill Feb 10th 1879 to Sept 1879, which we are compelled to presume he received, as he had it in his own hands and if he did not it is his own fault for which debt is not responsible. Debt objects to Turner receiving credit for <sup>claimed to have been</sup> any sum paid by him for repairs upon mill or race as the proof shows that debt had all such work done & paid for himself or if not paid for out of the tolls of the mill, that there is no work of that character except such as was his duty to do as Miller & without any charge to debt or to the mill.

I am for defendant.

On  
advs  
Memo of grounds  
- Claimed &c.  
C. L. Hamilton



The Mill property.

To James H Orr

1872.  
Aug

For his services in erecting Mill & Dam &c  
" his services per year, on an average,  
superintending the repairing & running  
of said Mill since it started in  
Aug 1872, to Aug 15<sup>th</sup> 1884, <sup>12 years</sup> \$15.00

Per

\$100.00

\$150.00



acct for  
services. re

J. H. Orr. \$280.00



The Mill property  
1890 To J M Orr- Dr

Deer To This sum paid to Alice Wynn  
for her reserved interest in said  
Mill and Mill property. .

\$200.00



Will property

To  $\frac{3}{3}$  life for mother  
paid Mrs. Wyman

J. W. Orr.

Filed before Court

July 2 1881

J. A. St.

Court



James H. Carr

To Mr. P. Dickman

1883.

Sept 20 To 84 1/2 the miles to note

May 20 1 mile Land oil.

8 507

1000  
1000



Wm. D. Hickman

vs  $\frac{3}{3}$  acct  
46.07

Jas. H. Orr

Admitted by  
the parties

July 16. 1884

Hyatt  
Carr



1881.

James W. Orr.

Wm. W. Lenny

Dr.

For two days work on West Register, Oct. 4.

Recd payment of Jas W. Orr for the above  
acct sometime, I think in year 1881.

J. W. Lenny



Thos W Denny.

vs { acct \$4.00

James W Orr

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Admitted by  
the Jffs as correct  
& just July 19<sup>th</sup> 18<sup>th</sup>

J. H. Hyatt  
Clerk

---



James B. Carr.

Wm. Hamilton & Russell.

1881.

		Dr.	
Aug	12" 20 one gal Lubricating oil	\$	.75
1882 Feb	23" " " " "		.68
May	12" " 3 gals Lard oil @ 35 cts		1.05
July	31" " 40 lbs nails by Wm L Turner @ 6 1/4		2.50
Aug	22" " 10" nails @ 6 1/4		.94
"	24" " 10" 8 P. nails @ 6 1/4		.62 1/2
		\$	6.57



No 11 On

auth. Dec 12<sup>th</sup>  
\$6.57

Wm. H. & Russell

Admitted by  
the Plffs Counsel  
July 16<sup>th</sup> 1884.

Hyatt Cur.



James H. Orr

Lo Drunken & Orr.

Feb 21<sup>st</sup>

Lo amt paid Frank Wood

Apr 17<sup>th</sup>

3/4 Gal's Lo & oil

18<sup>th</sup>

1 Gal

Dr

2.77

75

1.00

9.52



Hambleton Orr

2 week  
us 3 \$4.52

Geo. W. Orr

Admitted as  
correct by  
the parties

July 17 1884

Weyatt  
Cour



The amount of <sup>by way of</sup> expenses  
 on James H. Cho's Bill since Sept  
 12th 1883 up to July 12th 1884. Paid  
 by J<sup>m</sup> Headland Miller out of the tolls  
 of the mill.

1884

Feb 27

To amt paid Robert Anderson for work	
for traps	2.32
to paid L. B. Allen 1st day on race	.00
for prohibition (by Orr)	.55
" A. Hyatt for 2 gals turp oil	2.00
" James Miles for work on race	4.00
" James McWhorter	2.00
" Sam. Decker " (Orr)	1.50
" M. B. Allen " "	1.50
	<hr/>
	\$ 14.42



Account of expense  
kept by Mr. [unclear]  
\$14.42

Filed with his [unclear]



130 Cops	13 x 6	3 in thick	130
120 Cops	13 x 5 1/2	3 in thick	120
155 Cops	13 x 5	2 in thick	155
			<hr/> 405

Copies sent to Mr. Byington May. 1871.  
 — to be furnished at mill at 2 cts each.



1. 1000.  
 1000.00

Rent Dollars  
 House No. 810  
 1880.00  
 for Hill Road  
 Same date

394.50  
 200.  


---

 \$194.50

\$775.  
 57.50  
 60.00

22.80 17 25  
 3 150.00  
 258.00 1780  


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 402.50  
 200.00  


---

 202.50



1882 C. L. Hamblen

To the clerk of Lee County Court

Oct 5<sup>th</sup> Recording deed from Wm L. Turner. 1.25 - \$ 1.00 2.25

John R. Gibson clerk.

It is admitted that the above fee  
bill was paid by Wm Hamblen  
since the taking of J. R. Gibson's dep-  
osition. Oct 27/83. Mayes, Dillemore



C. R. Houghton  
to Rec Bill  
72.25-

J. R. Wilson

Filed Feb. 27, 1853.

J. A. Heath  
Clerk



James W Orr.

Plaintiff

vs

Wm L Turner.

Wm L Turner

Def.

This is a bill filed by James W Orr for the purpose of having ~~vacated~~ <sup>annulled</sup> and declared no longer binding a contract made on the 12<sup>th</sup> day of December 1868, between Wm L Turner & himself, and to this end to set aside vacate annul & declare void, for reasons stated in the bill, a deed or pretended deed on that day made by the said Orr to the said Turner & wife.

The property to which this deed, and the deed <sup>refers.</sup> of earlier date from the said Turner, to the said Orr, is valuable alone as a mill right. (See Depo. of witnesses) And was purchased by the parties with reference solely to the erection of a mill on it.

The grounds relied on by the Plaintiff to support this prayer of his bill, is.

- 1<sup>st</sup> Abandonment by the said Turner of his contract and a waiver of his rights under said contract.
- 2 Failure by the said Turner to do anything towards perfecting his contract, failure to assert for many years, any rights under said contract, failure to improve said property, or to assist in any way in its improvement, or to do any other act or thing demanded of him as a joint, or part owner of said property.



The Plaintiff claims That the contract between the said Turner and himself was executory.

That the deed from him to Turner & wife was made and delivered upon the condition understanding and agreement, That the said Turner would proceed at once to collect certain debts which he claimed to be due him in the state of Tennessee, and pay to him the sum of \$500 the consideration mentioned in the deed. But the respondent Turner denies

this allegation, and attempts to set up an avoidance

To do this he sets out or attempts to set out, a contract different in terms from the contract under which he claims as shown by his deed, from Orr. and entirely different from the contract of an earlier date as evidenced by the deed from him to Orr.

He alleges in his answer. That the two deeds dated respectively on the 10. & 12 days of December 1868 are one and the same transaction. That the deed from him to Orr dated 10<sup>th</sup> of December 1868 was conditioned on the deed afterwards to be made by Orr to him.

Is this reasonable, why not finish the whole matter at once. But then the deed of Decr 10<sup>th</sup> is perfect on its face absolute in its terms without condition of any kind expressed in it.

Now it is true as well expressed by Judge Lucier,

"Conditions may be annexed to every species of estate and interest in real estate but the conditions must be created or annexed at the time of the creation



of the estate itself either by the same deed or by another deed sealed acknowledged and delivered at the same time of the principal deed, 1. Index 2 Book, Page 92.

Turner, no where claims that \$500. was not the true consideration of the deed of Decr 12<sup>th</sup> 1868.

He no where claims that said consideration was paid by him either at the time said deed was made or since that time, but as before stated bases an avoidance of payment on the fact that he had a few days before sold the same property to the Plaintiff and that in that trade there was a secret condition. This he cannot do, because that contract was and is evidenced by a deed dated, Decr 10<sup>th</sup> 1868. and said deed is complete on its face and without condition. By that deed Turner parted with all his right and all his interest. and the second deed, that of Decr 12 1868 stands distinct from the first in every particular.

Taking the two contracts as they stand evidenced by said two deeds, (and Turner in his answer, says the two deeds without one word of explanation fixes the contract and all the contract there was) each is separate and distinct from the other, each complete within itself, and just as much so as if they had been made between entirely different individuals. Then Mr Turner cannot claim that both deeds are one and the same transaction, and this matter of avoidance set up by him, even if



he was not estopped from setting it up, is our matter not responsive to the bill, and as such must be proved, by affirmative evidence.

Then if Plaintiffs claim is true, that the deed from him to Turner and wife was made and delivered upon the express understanding and agreement that Turner should proceed to collect the debts due him in Tennessee and pay the \$500, ~~which he has not done~~ the contract was purely executory, and, Turner not having done so, the Plaintiff has a perfect right to ~~infer~~ that he has abandoned all intention whatever of going on to complete it, and he has a perfect right to demand that the deed of Decr 12<sup>th</sup> 1868, evidencing said contract be delivered up for cancellation, or if the said Turner elects, to complete the contract and now has a right to do so, then for specific execution the contract,

But They say, That Orr has acknowledged in the face of the deed the receipt of the purchase money

This is only a formal matter in a deed, and one of the things which may be disputed contradicted or explained and is binding on nobody, (see Bigelow on Estoppel page.

And again they say, That the Vendor's equitable lien has been abolished, by statute and that Orr retained no lien in his deed and can therefore enforce none, This may all be true, but it does not, if true, affect the position here taken that the deed was



delivered on condition and that the contract was  
executory.

But suppose the contract was executed by the  
delivery of the deed. But this deed (if it can be  
called a deed at all) like the writing under seal  
in the case of *Lexington & Atchison v. Nicholas*,  
Executors <sup>1st</sup> ~~Henderson~~ & Mumford 438. Can have  
no more force than a memorandum in writing  
sufficient to take the contract out of the operation  
of the Statute of Frauds.

But, I say, suppose the contract was executed by the  
delivery of the deed. It was a contract for a  
specific purpose, That of building a mill,  
all the testimony in the case with reference to  
the value of the property, proves that it was alone  
valuable as a mill site, and it is clearly shown  
by Orr's letters to Turner & Turner's letters to Orr  
That said property was regarded by them as valu-  
able alone as a mill site, and that their whole  
object was to build a mill on it, That for that  
purpose they had purchased it, and for that pur-  
pose alone. Then the property having been purchas-  
ed by Orr for the purpose of erecting a mill on it, and  
then an interest having been purchased by Turner for  
the same, each became bound to the other to carry  
said intention or purpose into execution, and to con-  
tribute proportionately to the expense of that under-  
taking, And yet each of said parties had a right



to abandon such intention if he desired so to do, but if he chose to exercise this right of abandonment or waiver, he abandoned such interest as he had in it, provided the other party, went on and carried the intention or purpose into execution.

Then when Turner stands by and sees Orr at great expense go forward and build the Mill at great expense, (notwithstanding he knew as he says in his answer that Orr was hard run and he wanted to help him) without contributing one cent towards the undertaking, shall he not be considered as having abandoned or waived his interest, as much as as if he had abandoned or waived it by a deed of release. He certainly had a right, by written agreement to waive his right or to release his interest. and it has always, or long at least, been held that the delivery of possession of lands was deemed a sufficient execution of an agreement to dispense with a writing under the statute of frauds. See *Coryman & Atcheson vs. McBlains Executors*, 449. Now did not Turner deliver possession to Orr, and that too not as joint or part owner, but as sole owner certainly. This cannot be disputed, to be a fact existing from 1872 (the date of building the mill) up to the day when he had the deed to record an improved and unacknowledged deed. And not only is this possession shown to be with Turners full knowledge but it is also shown to be directly with his con-



sent. but it is also clearly shown That he acknowledged Orr's Right for many years by renting said property from him, and paying full rent therefor and by the further fact That during all these years while he kept said property as Miller he never kept or had kept any account whatever of the amount of tolls received or made by the Mill or ~~an~~ account of any of the expenses of keeping said property in repair. And then couple this fact with his disclaimer of interest in said property to Benjamin Surgenor & Rutland See their depositions, and his failure to have his deed recorded, or to enter it upon the land books for taxation, or to list for the same purposes any claim against Orr, for rents of said Mill; and Can any other rational conclusion be drawn than That he had abandoned, waived or surrendered up all rights acquired by him under his deed from Orr of Decr 12<sup>th</sup> 1867. Again. suppose you take the deed of Decr 12<sup>th</sup> 1868 as an execution of the contract between the Plaintiff and Defendant Turner & wife, it may be abandoned and That abandonment may be conclusively proved by Circumstances See Lady Langboroughs Case cited by Powell on Contracts 413, 414 and again cited 1<sup>st</sup> Henning & Munford 435 & 436.

In That Case The lord and Tenants of a Manor entered into an agreement for enclosing a part of a common, to effectuate which, the Lord by



A separate instrument had released each particular Tenant from <sup>all</sup> quit rents and services; and the Tenants by another consented to the enclosure and released their right of common. The enclosure was begun, but some of the hedges being privately thrown down and other obstructions happening the lord relinquished his design and the Tenants continued to enjoy their right of common, and to pay their quit rents and to do suit and service in the same manner as if no such agreement had ever been made; but the instruments which had been executed were neglected to be cancelled.

It was afterwards held that these subsequent transactions amounted to a waiver of the agreement. Now do not the facts and circumstances of the case at bar so clearly show abandonment of the contract and waiver of the rights secured in the deed of Orr to Turner & wife by the said Turner as the facts of the case of Lady Lamborough. Thus, there was a contract or agreement to do certain things, and that contract was carried into execution by the execution of deeds, by the lord to the Tenants and by the Tenants to the Lord. Here there was a contract between said Orr and Turner - executed by a deed by which Orr conveyed to Turner a one fourth interest in the Mill and  $\frac{1}{4}$  of the Tolls &c. for the joint lives of the said Turner & wife or the surviving them.



There after the Hedges were broken down &c. there was no rebuilding by the Lord and the tenants continued to pay quit rents &c service &c.

Then Turner left, after putting Orr in possession & said away some years promising during the years 1871 & 1872 to furnish money to Orr, but failing to do so, then coming back about 1874, asserting no claim whatever to the property or an interest in but instead thereof renting it from Orr, paying full rent, reserving nothing for his interest keeping no account of tolls, contributing nothing to the repairs of the property, <sup>for the payment of tax on it.</sup> standing idly by and seeing Hamblen & Orr make a contract with Orr, build a granary on the lot, and then after they had ceased to use said granary actually renting <sup>it</sup> from Orr. Could there be acts which would more strongly prove an absolute abandonment of rights than is here shown, even stronger if possible than Lady Lanesboroughs case.

Nor is this all. He saw or knew that the mill was built, he had an account rendered by way of a letter, which he files as evidence and by which to that extent he is bound, of the costs of erecting the mill machinery outside of the house &c. &c. and yet from that good day of June 1872 up to the time Mr Orr had to get a new miller you never hear of him once demanding an account of the expenditures in building the mill, nor.



offering to pay, or repay one cent of. The amount thus expended. Nor do you ever hear during all that long time of his once demanding an account of the amount earned by said Mill. Why all this negligence, in asserting a right? Think you if he had believed he had an interest, that he would not sooner have asserted,<sup>2</sup> and if he is the kind considerate and charitable individual that his answer would have us believe why & why has he not offered to pay back, to Orr his part of the expenses of building the mill. The whole is inapplicable upon any other hypothesis than that claimed by the Plaintiff. That he had abandoned all claim to or interest in said property.

Then Turner is a prudent man in his talk, he says he has no interest in the property. Can we say that he did not know what he was talking about, and that he did know, or in other words, was he not then telling the matter exactly as it was, and that this all resurrected deed, is an afterthought born of the fact that Mr Orr was compelled to get a Miller other than Mr Turner.

Again the Defendants knowing the matter of avoidance set up by them was affirmative matter which devolved upon them to prove here introduced testimony to prove the value of the property at the time Orr purchased, it and for this purpose here introduced and examined



10 witnessed to which Plaintiffs have replied by an equal number. And it is a little remarkable that of the 10 witnesses introduced by the Defendants on this point not one was an expert in mill property, not one was a mill owner or occupier, not one even had any experience in running or dealing in mill property.

Of the 10 witnesses introduced by Plaintiffs on this point every one but one was either an owner of mill property or an experienced dealer in and occupier of such property.

The average value of said property as fixed by Dfts witnesses is about \$1700 the average price as fixed by Plaintiffs witnesses about \$700. Total average of all the witnesses about \$1200. Just what Turner admits Orr paid him & Mrs. Ryan together for the property, but if most weight is given to Pltffs witnesses as this must be for the reasons 1<sup>st</sup> Because they were men of experience in the handling of property of that description, & 2- Because this being an issue raised by the defendant and for him to prove then the fact is fairly established that Orr paid too much for said property, and down falls the beautiful building of avoidance set up and relied upon. and this case stands exactly as put by the Plaintiffs, a contract, not executed, a debt still due for property, cancelled by abandonment,



Upon the principles here contended for we cite  
the following authorities.

1<sup>st</sup> Tucker Book 2. page 92. same book. 341.

Powell on Contracts 413, 414. 1<sup>st</sup> Henning & Munford  
Page, 428 to 449.

Now as to the interest of C L Hambleen in this suit.  
And 1<sup>st</sup> Hambleen has no greater right than I  
we had on the day of sale and purchase between  
them, and on that day we have shown as we think  
clearly that Turner had no rights. That all in-  
terest which he ever had under his deed from Orr  
had long before that been abandoned, and thus  
for having nothing he could sell nothing to Hambleen.  
If we are right in this position then it would be  
useless to pursue this subject further, nor would  
we do so if he was not here claiming to be an  
innocent purchaser for a valuable consideration  
and without notice. This claim upon his  
part compels a further examination.

Now he who claims to be a purchaser without  
notice and to be entitled to the rights of such  
must stand clear in every particular



Does Mr Hamblen so stand? had he no notice was there nothing to put him on enquiry? If so he is not entitled to the position he claims.

Is there no fraud or collusion on his part with Turner nor no evidences thereof? if so, he does not occupy the high position which Courts of equity delight to protect as purchaser.

Had Hamblen notice, it is proved that he was Treasurer of Lu County from 1876 to 1879, and as such charged with collection of taxes, and it is proved that during all those years the property was charged to Orr and that he paid the taxes on it. It is proved that Orr was in the possession of the property all the way down from 69. to 1882 when Hamblen claims to have purchased, that Hamblen knew it, that he entered into a contract with Orr the object of which was to erect on said property a granary to be used by the firm of Hamblen & Orr. It is further proved that Hamblen & Orr, were partners for some years in the mercantile business and that in said business the firm did its milling at said Mill, then add the fact that the paper evidencing Turners right if he had any was old & stale and that it had never then been acknowledged, proved or recorded, and then add the inadequacy of consideration of \$500. for a claim estimated by both he and Turner at from \$3000 to \$5000 to Turners declaration in his answer "I knew I was to pay nothing and so told Hamblen"



and what then becomes of his innocence  
as a purchaser - He is not the man.

Now one thing more and I am done.

Now one thing more, Unless the plaintiff's bill is sustained, what becomes of this case, there can be nothing done with it save and except to dismiss it, In which how the defendants, shew themselves entitled to anything, Then shall they without anything showing themselves entitled to an account, be granted an account, <sup>without</sup> allowing the Plaintiff, ~~the~~ this account would be the defendant in that, the privilege and benefit of an answer. I think not, especially, when it appears, as it does in this case that the defendants have ~~been~~ have objected strenuously, to Mr Orr testifying in the case, So clearly unless the Plaintiff has shown himself, entitled to the relief asked the bill must be dismissed.



Orr

vs

Turner it at

C. T. Duncan

Brief



Orr & Turner & Turner & Orr.

Having filed a written opinion, upon entering the two principal decrees in these causes, I deem it proper also to state my reasons for the decree I am now about to enter. It is a case of novelty & difficulty. This is not to be wondered at, when the situation and relationship of the parties are considered. Their contracts and dealings were entered into, when the best feelings existed between them, and were treated by them as merely formal, and tending to consummate the end manifestly then in view, - Mutual aid during the lifetime of Dr. Turner's wife, & Mr. Orr's succession to what they might have. While this state of feeling continued, it was deemed a matter of little moment as to the state of accounts, or of legal right between them.

When, unfortunately, this state of feeling was interrupted, they were at sea, without a compass. This is at once made manifest by the very vague, & yet very large claims mutually asserted. That a Commissioner in Chancery, or a Court, can apply the plumbline with precision, and draw out a clear and distinct and well defined result, upon settled principles, from such dealings as these parties had, is hardly to be expected.

This Court hopes however, by the aid of principles applicable to such cases, to arrive at a safe decision, and one, while it comes not up to the claims of either party, will approximate justice between them.

The defendant Orr was certainly disappointed, in his reasonable expectation of aid, from Dr. Turner. Strug-



gling in his early life, & his disabled condition, he under-  
took a heavy enterprise, expecting considerable pecuniary  
aid from Dr. Turner; but <sup>he alone,</sup> did both the entire work  
of managing, supervising, controlling, planning, and  
what was still harder, the paying, <sup>except</sup> ~~except~~ the work  
at an outlay of \$2762. <sup>68</sup> over all receipts, <sup>except</sup>  
~~\$8.48~~ <sup>\$8.48</sup> an item of <sup>boards</sup> ~~boards~~ furnished by Dr. Turner  
~~and~~ <sup>and</sup> ~~the~~ <sup>the</sup> ~~work~~ <sup>work</sup> ~~had~~ <sup>had</sup> ~~been~~ <sup>been</sup> ~~completed~~ <sup>completed</sup>. Dr. Turner felt the force of all  
this. He regretted no doubt, his inability and acquiescence  
in Mr. Orrs receiving, as a reimbursement, all the  
property yielded, ~~that~~ <sup>that</sup> in possession for several years,  
<sup>Dr. Turner</sup> ~~he~~ took only the tolls coming to him as miller,  
and receiving of the net tolls during all the  
time <sup>on his 1/4 part of the property only</sup> <sup>or perhaps a few dollars more</sup> ~~one single years income~~. Now these transac-  
tions run through a period of 14 years. Neither party  
kept accounts of the income, neither party acted as  
an accounting party. In view of all the circumstances  
the lapse of time, the mode of dealing of the parties,  
and especially Dr. Turner's turning <sup>over to Mr. Orr</sup> all the tolls  
that came to his hands, save one year's toll, <sup>on his 1/4 of the mill</sup> ~~it~~  
occurred to the Court, & this <sup>view</sup> ~~opinion~~ is expressed in the  
opinion filed in the cause, July 5. '84, that the parties  
~~accounted~~ <sup>might</sup> properly be presumed to have thus  
adjusted all matters of account, up to the time of  
their disagreement, & had waived any further account  
thereof, & but for the pleadings, this would have been  
the decree of the Court. Now it is a little singular  
that the Commissioner, after wading through all  
the intricacies of the case makes only the small



difference of \$120.<sup>11</sup> between them. And in a review of the Commissioner's work, the Court sees no material error, except in his estimate of what <sup>and of a proper allowance to Mr. Orr</sup> are permanent improvements. The precise mode of his ascertaining the ratable value of the life estate is not given, but as far as it has been made, it is manifestly not unfavourable to ~~Mr.~~ <sup>Mr.</sup> Turner. There is, I think, clearly an error against ~~Mr.~~ <sup>Mr.</sup> Turner, in treating the new mill, as a part of current repairs. As there was a dam & race already there it is probable they were only repaired. But the bulk of the sum of \$2280.<sup>17</sup> cost of new mill &c. was manifestly an improvement. The house, kept in repair, will come to the remainderman. Many of the attachments, which constitute a part of the mill, will likewise come to the remainderman. All more or less impaired, of course, as time proceeds on every thing. This mill was built in 1872: it has now 10 years. Mrs. Turner is 70 years old. Her expectation of life is 10 yrs. Now when Mr. Orr comes into possession of it, taking the whole of the improvements, embraced in the \$2280 &c. item, after this 20 year use, it must be impaired. The  $\frac{1}{4}$  of this charge is \$570.<sup>12</sup>. If we suppose the deterioration to be  $\frac{1}{3}$  in value in the 20 years, Mr. Orr will come into possession of \$570.17 - 190.05 or \$380.12 in value as his remainder. That is not to be received for 10 years (Mrs. Turner's expectation of life. 2 Prob. (old) 381). What is its present worth?  $160:100::380.12=$  \$237.<sup>13</sup> is the present worth of that life estate. And



if this is a correct mode of estimating the life estate, the Commissioner's report does that much injustice to Dr. Turner. C

While probably, the agreed price of mill &c. may militate against the idea of Mr Orr's allowance for services prior to 1872, yet for 10 succeeding years, he supervised the mill and acted as manager and receiver of tolls &c. and I think \$100, ten dollars per year, for Dr. Turner's part, would not have been unreasonable. The Commissioner allowed him \$60 charging Dr. Turner with  $\frac{1}{4}$  of that or \$15.00

Deducting \$15 from \$100 = \$85, & adding 30 per cent. int.  $\frac{1}{2}$  the time,  $\$85 + 25.50 = 110.50$ . Correct Coms. Statement

Balance due J.W. Orr (Coms. report) \$120.11

Additional allowance (above found) 110.50  
making this sum in favor of J.W. Orr \$230.61

Contra. Value of Dr. Turner's life estate \$237.57

These estimates are not treated as absolutely correct. Perhaps if the judgment of the Court was to be solely based on them a recommendation <sup>of the account</sup> would be necessary, to ascertain more accurately the character, durability, & probable value of the remainder after the life estate of the Turners. But the result could not be materially different, and they demonstrate the soundness of the view, that until these parties disagreed, they adjusted their accounts without any formality, treated the tolls, such as were by Dr. Turner, as the whole amount, to which he was then entitled, and that this informal adjustment, running through so many years should not be disturbed, and that the account should be <sup>settled</sup> up the account, with Mr. Orr's accession to the property. If any thing were wanted to confirm this view it is found in the price at which Dr. Turner sold his whole interest, life estate & all claims for back tolls. Five hundred dollars being the price to be paid.

The final decree will be entered accordingly.

Jn. A. Kell  
Aug. 30 - 1884



James W. Orr vs. Turner et al & O.B.

C.L. Hamlin vs. Jas W. Orr X. Bell

Upon the original bill, it was determined by an opinion prepared & filed in the cause August, 22... 1882, determined that the plaintiff could not have a cancellation & delivery up of the deed of plf. Orr to Turner & wife, of the  $\frac{1}{4}$  of the mill property in controversy, but that the plf. might have relief, upon an amended bill, upon properly making out a case, for repairs &c. and the questions were all reserved, to allow the plf. to elect to amend if he chose. He did not so elect, but the defendant, asked and had leave to ~~renew~~ file a X. bill to assert his claim to ~~cancel~~ & ~~cancel~~ the deed. The case now comes on to be heard on bill, X. bill, answers to Original & X. bill, depositions and exhibits. There is nothing new at all in the case, since the hearing on the Original bill, except the X. bill & answer thereto. There do not seem to modify the case, as it stands, at all before the filing of the X. bill at all, except that it raises this question, Is the Deft. in the X. bill due any thing to be paid therein for Tolls?

There are two modes of settling this question. First, to treat of the property as it stood on the day of the date of said deed. Second, to treat of the property in its improved condition.

Under the deed to Turners, which can alone be consulted, in deciding the rights herein, Turner acquired a right to  $\frac{1}{4}$  of the mill lot or tract of land + + +  $\frac{1}{4}$  of the tolls of the mill & the exclusive use of the ~~mill~~ & garden". This is the grant. It is manifestly a simple grant of a tenancy in common in the mill lot & the mill, & the expression of  $\frac{1}{4}$  of the tolls, is explanatory, meaning simply







parties did not contemplate a strict accounting with each other, and the tendency of my mind was for sometime to assume that up to the time James became trustee, the right to account for any period previous thereto was waived, or at least lost, by lapse of time, and that the possession up to time and his receipt of the title, and turning over to Geo what he himself did not use, was to be treated as a mode of adjustment adopted by them which should not be disturbed by the Court; but I have treated also as a waiver of any further account;— but as the pleadings do not make such an issue; and as one party asks an account of profits, & the other party asks for an account of repairs & improvement, the decree following will be entered.

In A. Kelly  
Feb. 1880

Virginia:

In Vacation of the Circuit Court for Lee County, before  
Hon. A. J. [unclear], Judge of said Court, in Chambers, at Marion, Long  
County, on Tuesday Feb. 5<sup>th</sup> 1884.

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C. 2. Hambleton Complainant  
" J. R. Bell  
" B. Defendant  
James W. Carr

These causes came on this day to be heard upon the papers heretofore read in the original cause, and orders thereon entered, the cross bill, and answer thereto, with personal replication; the exhibits filed and arguments of Counsel, in writing. On consideration whereof the Court gave reasons heretofore filed in writing in the original cause is of opinion that the plaintiff therein is not entitled to the relief prayed by him, and it is adjudged, ordered and decreed that, by the deed of Complainant James W. Orr, to defendants W. L. Turner & wife, the defendants, upon its delivery to them became, for their lives & the life of the survivor of them, tenants in common with the plaintiff, of the mill property in controversy and entitled is an undivided fourth part thereof, with a right to, ~~that~~ one fourth of the rents, issues & profits arising thereon, according to the ordinary rules of law governing and controlling tenancies in common. But this bill is retained on the merits to be read with its exhibits and evidence in support of the parties.



to Mr. Orr as per return

and

to J. H. Hamilton

as per return

James M. Orr

Deborah Hagg 23645

J. H. Hamilton

23645

for the purpose of settling the same  
and it is further ordered, read and decreed that J. H. Hamilton  
as Commissioner of the Court in this cause, do take  
an account under the Cross bill, of the rents, issues, and profits  
of the mill property, in controversy in this cause, in which account  
the said property shall be charged with the necessary repairs thereon  
from the time when the same were first become tenants in common  
with James M. Orr, that is to say, the date of the deed to James M. Orr,  
until the present time; and of all necessary expenses in running said  
mill; and settling the said mill, with the income or tolls received  
therefrom; and will show what balance of income or tolls, if any,  
is left for distribution. He will then charge Mr. Orr with the whole income  
or tolls received by him, & J. H. Hamilton with the whole amount of income or tolls  
received by him either direct, or through Mr. Orr; and allowing Mr. Orr  
one fourth  
of the net tolls or income, and Mr. Orr three fourths of the net income  
or tolls, after deducting cost of necessary repairs and expenses, he will  
show whether either party is indebted on account of the same to  
tolls to the other, & if so how much. And the Commissioner will  
further ascertain the cost of the permanent improvements on the  
said mill property, and what would be the just and  
proportion of said cost to be borne by J. H. Hamilton on account of his  
his wife's interest therein; & he will give due effect to the basis of this decree  
that in the state of the account thus made up, whatever said J. H. Hamilton is  
indebted to James M. Orr, or to J. H. Hamilton, or to J. H. Hamilton, or to J. H. Hamilton,  
he shall pay the same to the party to whom he is indebted, & if J. H. Hamilton is  
indebted to James M. Orr, or to J. H. Hamilton, or to J. H. Hamilton, or to J. H. Hamilton,



James W. Orr

vs

Com L. Turner et al

} In Chy. - Brief of  
Com A. Orr of counsel.

This is a suit brought by the plaintiff for the purpose of rescinding a contract, made and entered into on the 12th day of Decr 1868, and to have the paper evidencing that contract canceled and annulled. Upon the grounds that the said paper was delivered to the defendant Com L. Turner upon the condition that he would pay to the plaintiff \$500 - the consideration contained therein, and that he would contribute to the improvements, repairs &c of the "Mill Property" described in the pleadings and evidence in said cause. Which contract and conditions the the said Turner abandoned and failed to perform. If mistaken in this view of the case, the plaintiff then asks for Specific performance.

The plaintiff claims that the deed to Turner and wife was delivered to him upon the "distinct and positive agreement" that he would pay the \$500 - therein named. This, defendant Turner denies, and



alleges that the two deeds, the one from Turner to Orr and the one from Orr to Turner & wife, were one and the same contract made at the same time; that the first deed was made upon the express contract and agreement that the second should be made as it was. This position is, not only most clearly, contradicted by the deeds themselves, but is strongly contradicted by the proof in the Cause. If the first deed was made upon a condition, why was not that condition embodied in the deed, or, in some writing on that day; or why was not the second deed, the fulfillment of the condition, executed on the same day, Dec. 10th 1868? "Lectures" says: (2d. Vol. Bk. 2nd p. 92) "Conditions may be annexed to every species of Estate, and interest in real property; but they must be created or annexed at the time of the creation of the estate itself, by the same deed, or, by another, sealed and delivered at the same time with the principal Deed." Defendants Turner in his Answer says: "The two



deeds without one word of explanation fixes the Contract and all the contract there was." The two deeds without one word of explanation show two separate and distinct contracts, as claimed by plaintiff, and this he is estopped to deny.

The two deeds are dated on different days, and there is not one word in either referring to, or connecting it in any way with, the other, as part and parcel of the other, or as part and parcel of one and the same contract.

The defendant Turner no where claims to have paid the purchase money named in the last deed, and if the plaintiff shows by the deeds themselves and other evidence that they were separate contracts, then the last is, according to said deeds and proof, and defendant Turner's admission of non-payment, Executory. This view of the case is strongly supported by the evidence in the cause of defendant Turner's acts of Abandonment, &c. Which <sup>acts</sup> must be considered as referable to, and explanatory of, the Original Contract. It is contrary to the experience and



4

observation of all mankind, that a man would have in his possession a vested right, and it paid for, and would neglect and refuse to assert or claim it in any manner whatever during a period of fourteen years; and not only neglect and refuse to assert or claim it, but actually disclaim any interest in the property, especially when he was during all that time in very poor circumstances, and in fact entirely destitute of any means of support, as he says he was when he had to sell to plaintiff and when he assigned &c to defendant Hamblen. His conduct must be convincing to any mind that he could not pay the purchase money, (\$500.) or, that he became dissatisfied with his said purchase and concluded to abandon it. How is it that he ever contributed one cent to improvements and repairs? — how is it that he ever had listed any interest in said property or claim on plaintiff (or) for taxation? — how is it that he let the firm of Hamblen & Orr (Hamblen "his confidential friend and adviser") make



a permanent improvement on the property (built a granary) without informing them he had an interest there?— how is it that he suffered the plaintiff to rent to Vanhook the particular house and lot, receive the rents and make improvements or repairs thereon in 1876 while he was living in Jonesville?—

how is it that he as Miller for four or five years set apart and kept no one fourth nor any part of the toll for his own benefit, except the "Miller's part." And not only this, but did not even keep nor have kept an account of the tolls of the Mill during that period?— and how is it he disclaimed to Burgan, Surgen and Rutherford having any interest whatever in the property? This conduct and these Acts of abandonment is irresistible proof (of which he gives no reasonable explanation) that the contract was as claimed by plaintiff, and that Turner had not paid the \$500— and either could not or did not want to and therefore abandoned his purchase.

~~He~~ he ~~even intended~~ to pay for



his purchase (?) he may have intended doing so when he collected his Tennessee money, or made some money preaching; but, he failed so utterly in the latter (See his letters to P. Ff.) also in the former (See his Ans.) that when he returned and quit preaching 1875, he then gave up and abandoned all thought & hope of doing so, and of contributing his part to the improvements. His conduct from that time forward. (See proof) clearly shows his abandonment.

A party by consequence and lying by without asserting his claim may lose the benefit of his deed. See Tucker 1st Vol. p. 341. Why did he not have his deed proved and recorded? Why the consequence of the deed proved in the cause if it had been paid for? If it was paid for, was it not their own? - and were they not at liberty to do what they pleased with it independently? Why the secrecy about ~~it~~ ~~the~~ having it recorded? And why the extraordinary conduct of Mr. Hamblin



ingoring secrecy upon the Clerk  
 when he had the paper recorded,  
 if he had without fraud and  
 improper collusion purchased a  
 paper which had been paid  
 for. In this connection observe  
 Hamblin's reply to plaintiff, when  
 notified by plaintiff "not to purchase,  
 and see the Statement of Turner in  
 his Answer, which shows clearly  
 that he told Hamblin that plaintiff  
 was claiming payment, when he  
 says: "He knew he was not bound  
 to pay any thing further, and so  
 told Mr. Hamblin." Why was the  
 paper ever concealed? Had was  
 it that Mrs. Turner was expecting  
 plaintiff to call for it, and knew  
 if he did Turner would give it  
 to him, and took it and hid it?  
 (See Nancy J. Woodard's deposition.)  
 unless she knew it had not been  
 paid for and that the plaintiff  
 was entitled to it and was to have  
 it. She is the wife of Defendant  
 Turner and claiming to be a  
 party in interest, and is presumed  
 to have known whatever her  
 husband knew, and according



8.

to the answer of these facts, the paper was concealed by her long before Turner was dismissed as Miller, and long before there was any difficulty between plaintiff and defendant Turner. Why does not left: Turner in his Answer deny specifically the <sup>specific</sup> charge made by the plff. in his bill, as to the conversation at the cedar tree? He must know it occurred just as stated. Why his dodge of the charge in the bill, that he on the evening after he had had his paper recorded stated to plff. that he had not yet found it? (In Turners language in Answer p. 10) Why in fact are so many of his statements in his answer contrary to the usual mode of stating facts, simple matters of fact, or, of denying positive and distinct allegations of facts. For instance, he says the property conveyed by him was valued at \$2000- and the life estate estimated at \$500-. By whom was this valuation and estimate made? By him alone we are left to presume. And again on p. 2 of Answer



he says as before hinted the property was regarded as worth \$2,000. By him again we suppose. Does he state in his answer any where plainly and distinctly what he claims the contract was? We think not. Upon the other hand he uses 18 pages to mystify and dodge a plain simple contract and avoid the payment of a just demand on the relinquishment of a recently asserted claim to an interest long since abandoned because not paid for. In his extraordinary answer we find a little of everything, for the purpose of avoiding and concealing the true facts in the case: His politics and whereabouts during the war; his impoverished condition and inability to pay for property just after the war; his ministerial services to the Church; his business career as a Merchant and then as Miller; And his great love and affection for the Plff., who he says was so hard run that he through sympathy did not



rather from him any part of the  
tolls (?) Ah! how strange it is  
that Mr. Turner never had sympathy  
enough to pay Plff. what he owed  
him, nor to contribute one cent to-  
wards improvements, repairs, &c.

The deft. Turner to avoid the \$500-  
responsibility, claims that he under-  
took to loan Plff. some money, and  
states that Plff's letters would sustain  
this view. They not only fail to  
sustain such view, but they and  
deft's. letters, strongly support Plff's  
charge, that Turner was to pay the  
\$500 for his interest and contribute  
to the improvements and repairs.

Turner states <sup>positively</sup> in this connection, that  
the reason he did not furnish  
or loan the money, is, that he  
did not and could not collect  
his Lumber money. Thomas' depori-  
tion proves that he did collect \$400.  
This is a positive and flat  
contradiction - and we are  
reminded of the rule: *Falsus in  
unum falsus in omnibus*. He  
also states that not one dollar  
passed between Plff. and him.



In Dr. Browning's 1st deposition  
as to who paid him. Plff.  
must have paid Turner as  
Turner paid Browning. It  
apply the rule again.

The conduct of Turner & Hamblin  
in the consummation of their  
trade, shows just such doney,  
trick, artifice, and deceitful  
practices, as is not known in  
ordinary business transactions;  
and therefore, their intention must  
have been fraudulent, and their  
transactions such as one as a  
Court of equity will interpose and  
set aside or grant the plff. relief  
against. To sustain this view, we  
have the inadequacy of the price  
agreed upon between them (\$5000-)  
For, it is in proof that they both  
regarded the interest then sold  
and bought at from \$3,000- to  
\$5,000-. Again, it is shown by  
Turner & Hamblin's Deed made  
Feb'y 2- 1883 and filed with Charles  
A. Russell's 2nd deposition, that  
nothing had been paid by Hamblin  
to Turner on said purchase



at the time it was made, nor at the time of the institution of this suit. It further shows that but little has been paid since, and that little for the purpose of trying to show good faith. But alas! the day had passed. Mr. Hamblin had had notice. In Mr. Russell's 1st & 2nd Deposition. When we read the said Russell's depositions and the after thought settlements, we can not give credit to the statements of Hamblin and Sumner in their answers, to the effect; that Mr. Hamblin had sworn at the time of answering said in any way any part of his said purchase. Mr. Hamblin can not, therefore, be an innocent purchaser, such as the law will protect. See Story's Equity Jurisprudence Vol. 2 p 959-61

The defendants, feeling that they could not safely rely upon the positions taken by them, claiming but one contract, very strangely elect to show the value of the property. To do this they take the



depositions of two witnesses who have had no experience whatever with mill property. And the Plff. takes the depositions of a like number - every one of whom, save one, are experts - men who have had experience in occupying or dealing in such property. The Defs. witnesses put the property on an average at about \$1,700 - Dec. 10th 1868, while the Plffs. witnesses put it at about \$700 - and the average of them all is \$1,200 - exactly what deft. Turner admits in his Answer that Plff. has paid. And, if we give most weight to the testimony of Plffs. witnesses as it seems we should, as they speak from actual experience, the value is fixed at less than \$1,000 - The defendants having elected to resort to this ground, must abide the result, which result is, ~~their~~ showing the value of the property less than \$1,000 - and that the Plff. has paid it.



14.

So ~~where~~ is the great bargain  
claimed and the services spoken  
of by Turner in his answer?  
This is however said matter set  
up by Turner & must be proved  
by him, but we have heard  
nothing of it since the answer,  
except his failure to prove the "great  
bargain."

"Badger of Fraud."

If the Plaintiff was without proof  
in the cause, except the badger of  
fraud which appear in it, the  
prayer of his bill should be granted  
and the Dec. of Dec. 12<sup>th</sup> 1868  
annulled and declared void.  
These Badger are not one nor  
two but are at least two in  
number.

1<sup>st</sup> The procurement of "Shrines of  
Evidence". Bump p. 95. The Plff.  
appeared to testify and thereby allow  
defendants to do likewise, but they  
in order to conceal what was in  
their own knowledge and that  
which they well knew was in  
the knowledge of the Plff. threw  
themselves back upon their legal



rights.

2<sup>nd</sup>

"Purchase of a State Paper". In case of Loringan v. Althorpe & Nicholas Exr. 1st H & M. p. 428. it was decided that 8 yrs. was sufficient length of time for this purpose. In this case 14 yrs. elapsed. This fact raises a presumption of collusion to fraudulently enforce a contract abandoned because not paid for, and -

3<sup>rd</sup>

The purchase of a paper 14 yrs. old by Hamblin which had never been acknowledged, proved, nor recorded. In 2<sup>nd</sup> Tucker p. 428.

4<sup>th</sup>

Turner's financial embarrassment and relationship to Hamblin.

Bump. p. 86-9. These facts appear in depts. answers.

5<sup>th</sup>

"Secrecy". Turner and wife for a long time concealed the paper in question according to their own answers and Mrs. Woodard's deposition - and worst of all Mr. Gibson's deposition proves that Hamblin their assignee at the last hour of making the paper known to the world by its



recognition, enjoined Seavey on him as Clerk - Carrying out his assignments Original idea of Seavey, Counselment and Fraud. Bump p. 81.

6th Inadequacy of Price. According to the depositions of C. C. Bell, E. S. Woodard, and Mrs. Wynn. defendants valued the paper assigned to Hamblett at from \$3,000 to \$5,000. Yet the price paid for said paper, they answer was only \$500, to be paid in goods, wares, and merchandises at that. Bump. p. 86. Hill on Trusts p 236-7

7- Notorious Possession by Plff. Bump. p. 90. Sugden on Pensions & Purchases Vol. 3. p. 447-8 & 471 & 468-9. It is admitted and proved all through the case that the possession of the Plaintiff has been open and notorious, and well known to defendants.

8th Out of Usual Course. Bump p 92-4 It is well shown that the business relations between Plff. and Deft-



Hambles has been very agreeable and intimate, and it is perfectly reasonable and natural that Hambles would have consulted Plff. before purchasing a state paper against him, either acknowledged, proved nor recorded. Thus we are again irresistably forced to the conclusion, that the defendants Hambles meant to collude with his Uncle for the purposes before stated.

9th Now we have the strange fact, that Mr. Hambles failed to claim any interest in the aforesaid paper when Plaintiff notified him to that make a purchase of the kind, though he answers that he had already purchased. This last badge chiefly shows the aching of the Mans Conscience.

10th Nothing Paid Down for said claim as is Alleged in Answers of Lums and Hambles. The two depositions of Charles A. Russell, and the Settlement filed therewith show conclusively that the answers of these defendants do this point out not be true and again



drive us to the ~~idea~~ idea of their  
collusion for the purpose of  
practicing a fraud upon the  
Plaintiff.

The "Effect of Several Badges  
of Fraud" Make a Strong Case.  
Bump p. 78.

We close this argument  
by saying most solemnly ~~that~~  
Turner's Acts of deception and  
Abandonment, and his collusion  
with Hambley for the purpose of  
practicing a fraud upon the  
Plff., as proved in the Cause, are  
all referable to and explanatory  
of the original Contract, and  
Turner's original intent to cheat  
and defraud the Plff., and prove  
that the Case is exactly that as  
the Plff. claims it to be in his  
bill. In authorities referred to in the said  
Court. Opp. for  
Plff.

Authorities not Cited.

Affirmative matter set up by Defts must  
be proved by them. Tyler & Nutford's Equity  
Pleading p. 461.

Fraud defined - Bouvier's Lexicon 1st Vol.  
p. 589 - also 1st H. M. p. 439 - 40



Parol Evidence admissible to prove consideration  
& that something has been omitted by mistake  
or fraud. p. 432. of Parol on Contracts

Admissibility of actions & circumstances.  
Parol - Contracts p. 384.

Passion in Notice - Same Author p. 302

Hambles' negligence to enquire. Sugden 3<sup>rd</sup> vol  
p. 471 - & for further authority on Notice  
See Sugden cited in Brief pgs 447-8 &  
468 - p. 3<sup>rd</sup> vol.

A consideration may be shown greater  
or less than stated in deed 1<sup>st</sup> Randolph  
p. 219

Estoppel. Smith on Contracts. Top of Page 73  
also See Note on top page 73-4 and  
authorities cited - 9 Leigh 342

Newland on Contracts. Notice. p. 511-12

Equitable rights lost by Abandonment. 2<sup>nd</sup>  
Washington p. 137 top.

On fraud. Story's Equity Jurisprudence p.  
74 & 2<sup>nd</sup> vol. Same Author p. 13 as to  
retaining instrument wrongfully.

Whitely Contracts p. 50 Note

1<sup>st</sup> Law Leaf to 567

Stowed by cases improvement

1 Story Leg 388 2 Story Eq 994

7<sup>th</sup> vol. 1237-8-9. 32 West 994

Ad. Case 273

Discretionary + Stamp - 1 Story

eq 272 - 4 Bell Case p. 167

Side par 134-5

Reprints & Enforcements 2 Story Page 662, 3. & 4.

for R. L.



James W Orr  
vs. Brief of Wm A  
Orr.  
Wm L Sumner et al.



James W Orr

vs

C L Hamblen

3  
3  
3

In a Cross Bill.

The Plaintiff in this cross bill claims to be the Vendor of W<sup>m</sup> L Turner and wife of a certain life estate and interest, in the Orr Mill property, and he prays for an account of the Tolls and earnings of said Mill from the date of his Vendors deed down to the present time.

The facts are that W<sup>m</sup> L Turner one of the Plaintiffs Vendors owned this property, subject however to a right of redemption reserved by Mary Wynn or Hurst by a deed of hers dated Nov 1868, by which she had conveyed a moiety of said property to the said Turner.

In this condition said Turner on the 10<sup>th</sup> day of December 1868 conveyed said property with covenants of General Warranty, subject however to Mrs Wynns reservation to J W Orr the Defendant.

Then on the 12<sup>th</sup> day of Decr 1868 said Orr conveyed to Turner and wife for their lives or the life of the survivor of them, an undivided  $\frac{1}{4}$  of of said Mill lot or tract with its appurtenances  $\frac{1}{4}$  the Tolls of The Mill, the exclusive use of the house and garden &c.

The property then stood in this condition, J W Orr owned  $\frac{3}{4}$  said property in fee.  
Turner & Wife  $\frac{1}{4}$  " " for life, with remainder in this  $\frac{1}{4}$  to J W Orr in fee.



all subject however to Mrs. Wyman's right of redemption to the extent of one moiety of the whole of said property.

Thus, on the day of 1870. Mr Orr purchased from Mr Wyman his right of redemption.

During the year 1869, and during the time in which Mrs. Wyman had the right to redeem, said Orr, with the knowledge and assent of said Turner and by agreement between them repaired the old Mill which was then in a condition that it would not grind (See Deed of Alex Wyman or Hurst) at a cost of \$300.

Thus in 1872, ~~at~~ <sup>with</sup> the full knowledge of Turner and at his urgent request <sup>Orr</sup> erected the New Mill on said property, at a cost of \$2224.17 and since that time he has erected other valuable and necessary improvements on said property has kept it repaired paid the Taxes on it &c,

Now it is evident that, this property outside of the improvements put upon <sup>it</sup> by Orr is of little value, and that in its condition at the time of the several conveyances above mentioned it would have yielded nothing by way of rents or tolls. Thus it is the earnings of these improvements, in which the plaintiff asks to be allowed to share and of which he asks an account.

These improvements were all erected by



Mr Orr and at his sole expense, would it be fair or equitable to give them to Riffe, until he or his vendors contribute their share of the expenses of erecting said improvements? Certainly not, for whether they were erected under a specific contract, or simply by one joint owner at his own expense, and with the knowledge and consent of the other the same principle prevails, all the expenses of erection must be paid, before there can be a partition of the earnings, rents &c.

But it is contended that the fee simple owner if allowed to do so might defeat the interest of the life tenant by the creation of costly permanent improvements, and so he might, But nothing <sup>this</sup> kind appears in this case, no improvement is put on the property (unless it is the granary) that is not absolutely necessary to its present use and without which it would yield nothing, then certainly the rule of contribution to these expenses would not be altered by the fact that one of the ~~joint~~ tenants holds in fee and the other for life - especially when it is recollected that all the improvements were made with <sup>of the life tenant?</sup> this full knowledge and at his request, then it must be further recollected that the largest portion by far, of said improvements are subject to great wear and will not last long. Not longer than the duration of an ordinary life estate of one old person much less two



By an examination of <sup>the</sup> deed under which the Plaintiff claims, it will be seen that its phraseology is a little strange and yet very specific. By that deed Turner and wife convey to him  $\frac{1}{4}$  the mill lot, &  $\frac{1}{4}$  of the Tolls of said Mill which have been collected. What has been collected? Turner says in his answer and Plaintiff reiterates in his bill that about 1 year's Tolls have been collected or received by him. Then it must be, according to the contract under which he claims, that he is only entitled to  $\frac{1}{4}$  of this year's Tolls collected by Turner, and with that Mr Orr has nothing to do. But I will now examine the subject with direct reference to his claim as he sets it up in his bill, i.e., a claim to  $\frac{1}{4}$  of the earnings of said Mill from Dec 12. 1868 down to the present time.

Now it is evident, and a well settled principle of law that Turner and wife could not pass by their conveyance any greater interest in said property than that which they owned at the time, and Hamblen by said conveyance can take only what they had a right to convey. They had a right to convey their interest in said property to wit an undivided  $\frac{1}{4}$  of the mill lot for their lives, they also had a right perhaps, to convey their future interest



est in the Tolls of the Mill, though perhaps this would pass anyway by the conveyance of an undivided  $\frac{1}{4}$  in said property. But Their part of the Tolls made by said Mill, from Decr 12<sup>th</sup> 1868 down to the Time of their sale to the Plff was a debt due them by Orr, and as such was only a Chose in action capable of sale and assignment and this is all the effect so far as these back Tolls are concerned of the deed of Turner & wife to the Plaintiff. And the Plaintiff takes this claim subject to all the Equities existing between his assignors and Mr Orr. So too he takes it subject to all the legal and equitable effects held by Mr Orr, against said Turner. And certainly the claim of the Defendant for improvements repairs &c. are claims directly against Turner for improvements out of which these Tolls directly grow, and without which they never would have been earned. Consequently until Mr Orr is fully repaid the money he has expended, nothing is due to Turner, and nothing being due to him he could sell nothing except to sell as he seems to have done  $\frac{1}{4}$  of what he had collected.

Nor does the claim of the defendant for contribution for these valuable improvements rest alone on the principle above adverted to, because it <sup>is</sup> a well settled principle



of both law and equity That where one joint owner has made valuable improvements upon the joint property, That he shall be compensated therefor, before the other is permitted to reap the reward of said improvements. Hamblett stands in the shoes of his vendors and must do what was incumbent upon them to do.

He asks for an account of the Tolls of the Mill. He seeks a share in said Tolls, he will be entitled to what he asks when he contributes the pro rata share of his interest, to the improvements made on the property by the defendant, nor is this a hardship upon him, or a subject of which he can complain, when it is recollect that but for the improvements erected by Mr Orr and paid for by his money That nothing in the way of Tolls would exist out of which he could seek a share.

He has come into equity, seeking relief. Equity's favorite maxim is, "That he who seeks equity shall do equity. Apply this principle and how can the Plaintiff expect to share in the earnings of the Mill until he has contributed his pro rata share to the erection thereof, his pro rata share of the expenses expended in producing those Tolls, see 2 Story 29 Jurisprudence Sec. 799a and note 799b, + note 3, also Secs 1237/1238.

The case might have been different



(Though it is not conceived that this case would) if Mr Orr had filed his bill asking for contribution from the other joint owners. But this he has not done, they upon the contrary have sought this forum for relief. They can only obtain it by conforming to the equitable rules and maxims prescribed by it. Give them equity but require them to do it.

And when this is done they will find that the defendant has not yet realized enough from the ~~profits~~ of the mill to repay him the outlays he has made on said property since Decr 12<sup>th</sup> 1868.

But these improvements are liens upon the property, and as such they follow it into the hands of voluntary vendees. And here again there is no hardship imposed upon Mr Hamblen because he had full knowledge of the state of this property as we think the proof clearly shows, if not he had knowledge of sufficient facts to put him upon inquiry, and then add the fact that all the purchase money ~~was~~ still due from <sup>him</sup> at the time of the institution of the original suit and much the largest part of it is still due.

Story Sec 1235 1236 1237 + notes

The plaintiff asks for an account let him have it, if he has shown himself entitled to it, but this being all that is sought



We respectfully ask that it be accorded  
him upon the principle that we shall contribute  
into his share of the costs of improvement,  
and We respectfully submit that upon all  
points of our answer required to be proved  
by reason of the general replication put  
in by the defendant that chance be given us  
to prove the same before the Commission  
appointed to take said account.

Done even for Deft

F W Orr  
ans & Defts Brief  
C L Hamblen



(1)

In the year 1868 Rev. Wm L. Turner and Mrs. Alec Hymn alias Hurst, were the owners in right of their joint purchase, of lot of 40 acres of land  $\frac{1}{2}$  miles west from Jonesville Va. known as the Hymn Mill property. It was and is chiefly valuable as a mill site and water power. - This property in an undivided state had ~~had~~ been purchased by these parties, at the price of \$1000. from one Alec Hymn one of the five heirs at law of John Hymn deceased former owner of said Mill site and an adjoining tract of valuable land. On this purchase Mrs Hymn previous to Nov. 1868 had paid \$235. and Turner the sum of \$65 = \$300. leaving a balance of \$700 outstanding, with perhaps some accumulated interest. - About this later date these purchasers became uneasy as to their ability to pay the residue of outstanding purchase money. They therefore sought sale for the property. - After several efforts Turner began stipulation with James W. Orr the plff. who refused to purchase Turner moiety alone but bargained for the whole property; Turner agreeing to procure Mrs Hymn's half by or furnishing the money. - Accordingly in the early part of Nov. 1868 Turner procured Mrs Hymn's deed for the property with a reservation named in the deed - that she



have the privilege, within five years to pay  
back the money she thus had advanced to her, and  
its interest, pay half the costs of the construction  
of the new mill & hence forward have  $\frac{1}{4}$  the  
tolls after the payment of the miller. See her deed  
on file. The price paid her was \$700 - or as she  
swears \$500 and what ever sum she had theretofore  
paid which is shown in proof to be \$235. Her deed  
was therefore in fact a mortgage, and for her  
equity of redemption it is shown in proof  
Mr Orr afterwards paid her \$215. and thus she  
closed out of the transaction.

Turner being now the owner of the  
whole property, sold to the plff, and on  
the 10<sup>th</sup> day of Dec. 1868 Conveyed by deed  
the same to Orr - Mrs Hymas half on the con-  
ditions named in her deed to him. On the  
12 of Dec. 1868 two days after, Orr re-conveys  
to Wm L. Turner and Phebe E. his wife, by  
deed almost similar in language, "Mutatis  
Mutandis;"  $\frac{1}{4}$  of said land & mill lot and  $\frac{1}{4}$   
the tolls of said mill, with the exclusive use  
of a house and lot therein all for the life of said  
Phebe or the survivor of them. The deed from  
Turner to Orr recites that the consideration was  
\$2000, the receipt whereof is acknowledged  
and the deed of Orr to Turner & wife re-  
cites the consideration of \$500. The receipt



whereof is also acknowledged. The deeds are each in the hand write of Mr Orr and each witnessed by David S. B. Orr - Orr's deed from Turner is proved & recorded in 1871 - And Turner & wife from Orr not until 1882 - Just before the institution of the Suit.

Soon after the execution of these deeds Mr Turner who was an itinerant preacher left its vicinity and for four or five years remained in N. C. and Tenn, discharging his ministerial duties - about 1874 or 1875 he returned to Jonesville and he and the plff entered into a partnership to carry on the mercantile business, which continued for about one year. To May 1876. In the time thus passed over Mr Orr had built the new mill on said lot, and otherwise improved the property - It will be observed that Turner lived in the house on the lot reserved to him at the date of the sale and moved out of the same, which was afterward occupied by Mr Orr's miller when the new mill was built - After the close of the mercantile business Mr Orr paid Turner on account thereof \$250. See admissions - And Orr put up a house for his miller at a cost of \$300 or \$400. And when thus completed Turner & wife again occupies their old house, without let or hindrance, the payment of rent or objection by anyone - And while out of the possession



Mr Orr gives him unlimited orders to his  
Millers for whatever he called for from the mill  
and no charges is ever made against him for  
it. He continues his possession of the house  
up to the present. See depositions James Burnett  
or Robert Vandeventer. Some four or five years  
ago. Turner enters the mill as miller with  
one Frank Wood and continued to operate the  
same for  $\frac{1}{2}$  the tolls up to a few days before  
the institution of the plffs suit. In the latter  
part of the summer of 1882 or early fall, Mr Orr  
discharges Turner as miller, and refuses him  
further aid & hence the controversy - About the  
15<sup>th</sup> of Sept Turner has his deed recorded, and  
on the 17<sup>th</sup> goes out to C. L. Hamblin and on  
the 18<sup>th</sup> he and his wife join in a deed of  
conveyance to said Hamblin which is also  
recorded - At the Oct. Rules the plff files his  
bill; At November Rules the defendant  
demurs and answer, and then depositions  
in great numbers are taken. The object of  
the plffs bill is not clear - He claims that  
the deed to Turner & wife conveys no right because  
there was a verbal agreement for the payment to  
him of \$500 and the same has never been paid  
and that the defendant Wm S. Turner has  
abandoned any claim or rights thereunder &  
attacks the deed to Hamblin for fraud, and  
want of consideration



(5)

On this Bill & answer the Defendants submit  
the following argument and authorities -  
The demand to the plffs bill, is well  
taken and must prevail; and thus end  
the case - unless the allegations, for specific  
performance, at the close of the bill saves  
it, from this fatal consequence - The defend-  
ants hold it to be a bill for specific per-  
formance; and thus to that extent, maintain-  
able by the court. If so then the rule in  
equity is "If the plff sets up by his bill  
a contract and fails in the proof as  
stated in the bill; But the contract is proven  
as set forth in the answer, the Court will  
administer relief by setting up the contract  
proven as contained in the answer; and  
will not turn the defendants around to  
his new action" - See. Sugden on Vendors. Vol. 1  
P. 363. (Fig 17). Cases cited there - *Lisle v. Clayton* - 13  
Ves. <sup>15 Ves.</sup> *Higginson & Clowes*; the latter case, makes a  
distinction where either party proves his case and  
holds the bill should in that event be dismissed -  
*Brooker v. Scheffer* 21<sup>st</sup> Gratt. 474. treats upon  
the same subject at large and establishes the same ~~principles~~  
Other cases bearing upon this and other points  
in common will be hereafter cited - The rule here  
contended for is fully established by our  
Supreme Court - So much testimony has  
been taken upon the inadequacy of price  
or rather to show, the absurdity of the price



mentioned in the deeds, and asserted by the defendant Turner as the basis of the contract that a good case will be here referred to. At the same time it is not possible for the principal to arise in this case. Turner was a refugee from Tennessee and not long in the community. Mr Orr the plaintiff was born and raised in 2 1/2 miles of the mill in dispute, had known it all his life; was sheriff of the County at the time of its purchase, and clerk of the Court at the time of its (the mill's) construction. It would therefore be wholly untenable to assert the advantage of superior knowledge or influence upon the side of the defendant - pressed as he was, by the purchase money then due & compelled to sell at some price, it would seem far-fetched to say the plaintiff contracted under any unfair influence. *Hale v. Wilkinson* 21 Gratt 75. *Mettler's adm v. Hagan* 18 Gratt. 231. This case settles that the vendee under a deed by a competent party "is entitled to hold without <sup>regard</sup> to the value of the consideration paid therefor". And would seem to settle this case unless undue influence could be shown - There is no pretence in this case of undue influence or misrepresentation. The case of *Stearns et al v. Beckham et al* 31 Gratt 391-417 both from



the high standing of the parties, and the amount involved, drew forth all the doctrine upon this principle, and is relied upon as settling this case on this point for the defendants.

Sugden on Vendors Vol. 1. p 339 - 385 is perfectly in accord with this view - also same book

438 (fig 12.3. (6)) 442 (fig 18) and directly in point

474 (fig 19) Storey's Equity Jurisprudence Vol. 2

Sec. 757 767 which latter treats of parol testimony and is here cited for convenience - Sec. 772 is

regarded clearly in point for the defendants also

Sec. 775 - See also 776 and the case there cited and

the note on Page 826. The proof in this case

upon the point of price, is from 20 witnesses

10 puts it, the mill site, before Orr built, at

from \$1500 <sup>one putting at \$1000 - 25</sup> to \$2000 - while 10 examined for the

plff put it all the way from \$600 to \$1800.

But reference is here made to the testimony

of Mary Wynn alias Hurst, she swears Mr Orr paid

her under her contract with Turner for her

half of said property \$700, that is five hundred

and whatever she had paid on original purchase money \$235.

See her deed, in which she

reserves the right of re-payment and 1/2 the cost of

Construction and then she was to lend 1/4 the tolls -

For this right or the equity of redemption under

Turner's purchase Mr Orr subsequently paid

her \$215 + 735 = \$950 actually paid for her

(Miscellaneous)

(Not found & must have mistaken the page)



moiety, then supposing Turner to be in the  
minds of the parties equal, in value we  
have for the whole price of the whole property  
\$1900. Not far from the defendants view and  
then one moiety Turner was as we claim  
to be paid in tolls dependent upon the  
will of Mr Orr as to time of Construction  
and then only for the life of two advanced  
persons. If it be true then, as stated by his  
own witness that the pliff paid \$950. for Mrs  
Wynns moiety, what has he ever paid the  
defendant Turner?

It may be contended however, that the pres-  
ent mill is not the one from which tolls should  
issue, because not in existence at the date  
of Orrs deed to Turner. I have heard such an  
argument hinted at - Such grounds are not  
tenable. Because the pliff in his bill admits  
that the purchase was made when an old  
mill of no value was upon the lot and with  
a view to Construct thereafter a fine flouring mill  
which intention was subsequently carried out &c -  
This then was the object of the purchase and must  
have been the mill Constructed in reference to. &  
otherwise Mr Orr could not have torn down  
the old mill without the defendants consent -  
no relief is claimed by the bill on this account  
and none can therefore be granted. Ould & Canington  
v Myers 23 Gratt - 383.



(9)

and it is a general principle in equity that relief cannot be granted upon grounds not stated in the pleading or in some way put in issue - Nor need proof be made on matters not stated in the bill *Chase v Chase* 28 Gratt. 686.

By a reference to the plffs bill it will be seen that he makes only two material allegations, as the foundations of his action. "the practical abandonment of the contract" and the non-payment of the consideration -

These allegations are flatly denied by the answer and thus puts the plff upon proof - There is no proof that the contract was ever abandoned, except the statements of defendant Turner at different times that he had no interest in the same. There can in no way affect Mrs Turner's or C.L. Hamblin's rights. *Mull & Scott exrs v Scott* 18 Gratt. 150. See opinion of Joyne, sets this matter of parol surrender at rest and shows the law clearly for the defendants on this point. Besides that allegation in the bill, is flatly denied and as to the effect of the answer see *Boughton v Coffey* 18 Gratt. 184. *Powell & wife v. Manson* 22. Gratt 177. This case meets fully the effect of an answer in every conceivable phase of this case. Thus far we have followed the authorities to establish, as they clearly do, for us the following propositions viz:



- 1 That a bill for specific execution of a Contract will not be dismissed because the plff fails; but will administer relief to the defendant if entitled thereto.
2. That inadequacy of consideration, for the property purchased, will be disregarded, unless the same amounts to fraud or is so gross as to shock the moral sense - which means fraud.
- 3 That Relief cannot be granted upon grounds not stated in the bill.

We desire here to refer specifically again to *Stearns & al v Beckham & al* 31<sup>st</sup> Gratt 379, and the Cases cited on p. 391 which bear very fully upon specific execution, and equity relief. And especially among the cases cited of *Whitowife v. McGannon* 29 Gratt. 571. This latter case is full & clear.

The plff in his bill admits that he did execute the deed of 12 Dec. 1868 to Turner & wife in consideration of the sum of five hundred dollars and delivered it to Turner & wife, upon the condition of Turner's after payment of that sum to him. This admission is fatal to his whole case for upon the delivery of the deed as stated in the bill the parol condition became void, and the deed at once operative, when so



delivered to the vendee. Suggested on vendors as he  
you cited. And after a full examination of the  
Text writers, we read carefully Miller v  
Hetcher 27 Gratt. 403 (Opinion of Staples) which  
so fully collates the authorities on this point that  
no further reference need be made. This au-  
thority fully establishes the fact of the  
deed be perfect on its face - that is  
shows nothing further to be done - it is  
effective and the personal conditions need  
not be performed <sup>when the delivery is to the grantee.</sup> If then the deed was  
as is claimed, perfect on its face, was de-  
livered as admitted in the bill and thus be-  
came complete & operative. The doctrine of  
Estoppel in its full extent and widest scope  
applies and is a complete bar to the plff.  
and panoply to the defendants.

As to estoppel - and delivery of deeds. See  
Bower v Mc Cormick & als. 23 Gratt 310 & following  
pages. Benjamin & als v. Clark & als before cited.

7<sup>th</sup> Rob. New practice P. 386-387 - 411 - Lomax

Vol. 2. P. 6, 20, 21, 23, 25, 26, 27, 29, - 30 -

189 - 192 and particularly 210 (fig 10) 211 - 297

208. On this point the East Va Report,

75. Va 309. Wendlinger v. Smith and als - 309.

Again review and confirm the principles  
of Steam & als v. Beckham & als. The principles  
of Estoppel & delivery may appear somewhat



mixed & confused, owing to the examination of the testimony in the foregoing Citations; but they are believed to all bear upon the principles of this case. Without canvassing the whole testimony the defendants maintain that the following points are clearly in their favor.

1. The value of the property is about equally balanced for \$2000. and for \$1000. The estimation in the deeds although by way of recital binds and stops the parties thereto from setting up a different one. And the law is therefore for the defendants.
2. The inability of Wm S. Turner to pay; his partnership with Orr, and Orr's subsequent payment to him of \$250 on the closing of the mercantile partnership rebuts the idea of Turner's indebtedness to the plff.
3. The occupancy of Wm S. Turner's wife of the house and lot mentioned in the deed, coupled by the plffs unlimited orders to Burnett or Vandeventer Miller, for such supplies as said Turner might call for, without any pay therefore is a clear admission of Turner's interest in the mill and is rendered plain by the plffs letters, and rebuts the idea of abandonment of the contract & explains the delay.
4. Thomas' depo<sup>s</sup>. sustains the answer of the defendants as to his claims in Term, and his failure to collect in time to aid by way of loan the plff.



4 to build the mill - Besides this was no part of the contract, and the defendant Turner was under no legal obligation to make the loan.

The answer of Turner on this point is fully sustained by the letters on file and his conversation proven by E. S. Woodward a witness upon the part of the plff. And also by the conversation proven by Mrs Woodward with defendant Ohebe Turner.

5 The plff fails to prove any conditional delivery of said deed, and the bill upon this point is denied by the answer, and therefore totally fails.

7 The allegation that the contract had been abandoned, that is had by parol been surrendered, is not sustained by proof, nor could such surrender be made see *Scottons v Scott* 18 Gratt. 100. And John Burgan's deposition shows the reasons of such statements - And in no event can Wm S. Turner's statements affect Mrs Turner or Hamblin without notice.

8 No allegation of the bill as we take it affects or can affect, the right of Mrs Turner, and her assignee Hamblin, is clearly entitled to recover the moiety due her. No proof in the cause militates against this view.

9 The plff makes great claimer against the assignment to Hamblin, it is submitted that



before the plff can in any way affect or even challenge the assignment to Hamblin he must make out a clear case against Turner & wife, otherwise Hamblin's assignment does not affect him; nor is it a thing of which he can legally complain.

10 It is submitted with great confidence, that if the case could not be maintained upon any other grounds for the defendants - that Hamblin is clearly an innocent purchaser without notice and must hold -

The bill alleges notice and fraud against him both of which are specifically denied, by each of the answers and there is not one word of proof or a single circumstance to support the bill, and the answers must therefore clearly prevail.

Much testimony has been taken, to repel the idea that Mr Orr would have made such a bad bargain as to pay the price agreed to be <sup>paid as</sup> shown by the deeds. It will not be seriously denied that when Mr Orr purchased the equity of redemption from Mrs Hyman, that he then had full knowledge of the price or the interest involved. She was to pay back the seven hundred dollars and interest; pay the costs of construction and have  $\frac{1}{4}$  the tolls after payment of the miller - then if she had



done that, he would have had  $\frac{1}{4}$  the tolls on  
her half to pay over to the defendant, Turner or  
wife in discharge of his obligation during their  
lives; after their death he would have had  
this  $\frac{1}{4}$  to revert to him and for which he had  
not paid one cent. And if this state of case  
is true as it certainly is: By his purchase of the  
Equity he stands in her shoes and no  
hardship is entailed upon him even if he  
had paid full value for the entire moiety to  
Turner. But did he? Turner was due on the  
original purchase \$500 less \$65 = \$435 which is  
all he could have paid on that half - He paid  
Mrs Wynn back his own proof \$235 advanced by  
her, and \$215 for Equity of redemption \$450  
and then paid the fine hundred dollars substantially  
purchase money less \$235 = \$265 which added  
to \$450 make the sum of \$715 paid to her as the  
very least he could have paid her. Now if  
he paid her \$715 and paid Turner as above  
\$435 - He must have paid Mrs Wynn \$280 more  
than Turner, and paid back \$1150 for property  
he has labored to prove was only worth  
\$500 or \$600 See depos. of Bonham, A. P.  
Wynn, Wright Stickley and others - and these figures  
would show the old woman Mrs Wynn selling  
to shrewd business men property as they would  
have no belief <sup>worth only that is her half</sup> \$250 or \$300 for double its worth  
and more viz \$715 - What Sophistry! & fallacy!



Because Mrs Wynn deposes upon the part of the plaintiff that she was to have the amount as shown first stated in this paper.

It is worthy of notice that the plaintiff is perfectly silent on the price paid by him or to whom paid and thus give us the full facts - and having failed to do so in his bill or prayer for relief or in any way sought relief therefrom, it is conceived that no notice need be taken of that feature or any proof made in reference thereto upon the authority of *Cash & Cash* before cited.

Yet the proof might perhaps be taken to contradict Turner's answer if so it need have ~~expended~~ <sup>so much</sup> ~~so much~~ <sup>force</sup> ~~on so small a matter~~ <sup>not</sup>, because, that allegation is fully borne out by the deeds, and although made by way of recital it estops the parties from showing a different valuation, and the proof of Col. Martin, Andrew Melbourne E. S. & wife W. Woodward and Andrew M. Ely <sup>ad C. F. Cook</sup> all men of property & close neighbors shows fully the market value to have been certainly not less than \$1800. Is it to be seriously contended that Mr or any other reasonable man would, have given up the house for Turner & wife to live in, built a new house at the cost of \$400. and then given an unlimited order covering some four years of the time to



17

defendant Turner to the mill for supplies and all this for years without compensation unless the plff had regarded that Le Turner had vested rights - And do not all these things overturn the whole theory of the plffs bill, and sustain Turners answer in every feature of its material allegations?

Look at Oris letters which clearly admit the defendant Turners claim and interest in the mill, and then as if moved by some fatality he files Turners ~~letter~~ - which with his own, refutes clearly any claim of the plff for a debt due as asserted by him in his bill. But they fully sustain the view of the answer, that after the Trade was made, and no part of the Trade - The defendant Turner still conditionally promised to aid the plff by a loan not of five hundred or any definite sum but such sum as he could raise.

Now if the view we take be correct - that Oris deed to Turner is valid and passes the title then the defendants assert with some degree of confidence, that any improvements made by the plff with the full knowledge of Turners wife's rights, were made at his own cost or risk and Turners or their vendee is entitled without contribution



to fully enjoy such improvements as  
guaranteed by their titles - Should this  
question arise and be controverted, authority  
will be produced to sustain it

Having thus far mainly labored the case  
as between Turner & wife & the plff, we  
deem it only necessary to add, that  
whatever fate awaits them we with great  
confidence rest the defense upon the  
rights of C. L. Hamblin as an innocent  
purchaser without knowledge or notice of  
the plffs assumed rights, nor do we  
see how our argument upon that  
point can be necessary - If he be such  
a purchaser is protected - The bill alleges  
that he is not - Hamblin & the Turners  
answers deny the allegation, and no proof  
on the point, to the strength of one witness  
even is produced and hence the bill on  
that point must fail. Hamblin therefore  
as it appears to us should recover, upon the  
strength of the case as between the plff &  
the defendants Turner & wife - How much  
more so upon the high grounds of an  
innocent purchaser, for value. All of  
which is respectfully submitted.

H. J. Morgan & A. L. Pridemore  
for defendants.



Le. L. Hamblin  
Wm L. Turner wife

Ads } Brief & ar-  
gument

James H. Orr



C. L. Hamblin  
against } An Crofs-Bill.  
James W. Orr.

By reference to the written opinion of the Court on file with the Cause, accompanying the vacation order it will be seen, the Court, was of opinion that the plff to entitle himself to Constructed expenses and repairs, would have to amend his bill his original bill not being sufficient therefor. Nor the <sup>allegations</sup> facts of his bill sufficient for such relief.

It will be seen that much of the testimony and almost all the plffs arguments in its original, were devoted to that branch of the subject.

The plff not having availed himself of the privilege to amend, but refusing the same it is submitted, that he cannot by way of answer avail himself of a defense, deliberately abandoning an amended bill.

It is further submitted that the construction of a Millers house, is no charge against the life tenant, and that as no tolls are sought for the old Mill no charge can be maintained for them; or if they can the tools of that mill must also be taken into account.



There are facts that show the defence full  
in the face in a Controversy, between them  
and the religious Contracting parties.

But what shadow of claim have  
they against Hamblin who makes his  
purchase under a deed full & com-  
plete, with no record squinting at  
offsets due thereunder. His purchase  
under this deed from the life tenant  
in possession of the leased lot  
accorded him, most certainly entitles him  
to hold against account, registered only  
in the pocket of the defendant.

But again can it be seriously  
contended that the contract is as contended  
by the defence - Must the life tenant  
pay 1/4 of expenses. If ~~that~~ <sup>was</sup> contended as  
the plff that was an express agreement  
of course it would have to be  
complied with. But this he only  
interprets as the true meaning - Now see  
how carefully the reservation & privilege of  
Mrs Wynn is guarded by her deed - and  
what Turner acting for our part - in  
that deed - how it puts to flight the  
construction of the defence -



Wm. C. ...

Sept.

and

On a bill in equity.

L. A. Humber

vs.

The said defendant excepts  
such testimony as has been taken in this  
cause which is intended to charge the  
said defendant with any fault for the  
use and occupation of the house and  
lot now held by the plaintiff, because  
no such issue is raised in the plead-  
ings in said cause the plaintiff  
thereby claiming in his answer  
that no assignment or charge is made  
as to said house & lot.

July 21<sup>st</sup> 1884

Richard H. Humber

per Sept



1831

as 3 replies to  
testimony

C. L. Hamblin



Exceptions to the account of W<sup>m</sup> L Turner which account is now offered to be filed in the chancery cause of James H Orr vs W L Turner et al. and the cross bill, of Charles L. Hambley, vs James H Orr.

1<sup>st</sup> The first ten items in said account are excepted to because they are not supported by the proof, and because the sums therein charged are in direct conflict with the proof.

2<sup>nd</sup> The 11<sup>th</sup> item in said account being the charge for use and occupation of house, and lot, for 4 years, at \$500 per year is excepted because such an issue is nowhere or in no way raised in the pleadings in these causes or either of them. Because this question is not germane to the issue, and because it is a mere personal matter between Mr Turner and Mr Orr.

3 Proof is required of items 12, 13, 14, 15, 16, 17, 18, 19  
20, 21 & 22,

4. Item 16 is objected to because no such issue is raised in the pleadings, and because the items therein charged, were expended by said Turner of expended by him at all under a direct contract to furnish said material and do said work, for the use of said house for one year, and that he did use it and occupy it for that or a longer time.

5 Item 17 is objected to because it shows on its face that it was for work done on the mill race while Turner was miller, when it was his duty to do such work, and pay for it out of the sum he received for running the mill.

6 Item 18 is excepted to because it is in no way an issue or part of an issue raised in the pleadings in said causes, and because it is or appears to be only a mere personal matter, between Orr and Turner in no way connected with these cases or the inquiry before the commissioners.







Exceptions to defendant's Acct. "O"

Item First: Of \$300. for repairing and starting old mill is excepted to because, it is no way involved in the pleading of this Cause. If it were the tools, rents and profits should be taken into account. Besides the same should be itemized.

Item ~~22~~ is objected to because not itemized and does not show what it is for. That is the item of \$52.60 to L. Henis &c. And each item that does not show what the same was for - what amount paid is excepted to because proof cannot be produced of rebuttal.

Account marked "O" is objected to because it is on its face, shown to be for the same as partly embraced in account "O" and also because it is not itemized.

Account R. is objected to because not embraced by the suit or contract and not built by any authority from the self. And besides is not embraced by the pleading.



The Defendant objects to the Plaintiff now filing  
exceptions to his account because it is too  
late. Said exceptions if intended to be available  
for any purpose should have been made  
and filed when Defendant filed his answer  
his said account making as it did part  
of his answer -  
June 26<sup>th</sup> 1884

Richard & Dunsen  
for Defendant

Wm. C. Dunsen  
also exceptions to  
said account  
Jas. W. Dunsen

Filed June 26<sup>th</sup> 1884  
J. W. Dunsen  
Clerk



C L Hambleton

Plff

vs

Bona & bill.

James H Orr.

Def

The defendant James H Orr excepts to the report of Com John A & Hyatt and the statements therewith filed in this cause on the 16<sup>th</sup> day of Aug 1884.

M. P.

- 1 Statement M. P. filed with said report. is accepted to be cause. said Commissioner fails to charge the Mill property with \$200. the sum paid on 26<sup>th</sup> day of Decr 1870. by Mr Orr to Mrs Hyatt for her right of redemption in said property.
2. Because said Comr does not charge said property with \$100. for the personal services of James H Orr in erecting the New Mill.
3. Because said Commissioner allows interest on the the Tolls of the mill. for half year when they should only be charged at the end of each year. See 7<sup>th</sup> Leigh. 720. 16 Gratton. 21. - 58.
4. The sum for <sup>running & repairs.</sup> ~~repairs~~ should be divided ratably, each year in the absence of proof showing the year in which they were made. which is not done by Comr.
- 5<sup>th</sup> Because said Commissioner does not charge the Mill property with the expenses of building the Millers house, which he should have done because it clearly appears



that a Miller's house was necessary and  
the one built is not more expensive than  
ought to be erected on property of such  
value.

R. E.

1. Statement R. E. is excepted to because it  
fails to allow Mr. Orr's account for services  
in superintending the running and repairing  
of said <sup>mill</sup> as proved. The amount proved being  
\$15 <sup>for 10 years. \$150</sup> per year when in fact said owner has  
only allowed him \$60. for all his services.

2. Defendant excepts to the action said commissioners  
~~charging~~ said Mill property by the following  
amounts allowed in Lumber for or, to wit \$800  
paid Osborne on race, Lumber \$3.00 James  
Miles \$800 James Turner \$800. because the  
proof shows that said work was all paid for  
by stuff from the mill.

P. I.

1. Statement P. I. is excepted to because it class-  
es the Miller's house as a permanent improve-  
ment when he should have made the same a  
charge of repairs, as it is clearly proved that  
said house was necessary and not more costly  
than reasonable for such property.

T.

1. Statement T. is excepted to because not sup-  
ported by the proof so far as allowances are  
made to Turner for running repairs after the  
year 1876. it clearly appearing that every  
thing paid by him was paid by stuff from  
the mill.



2 and because he is not charged in said statement for the use of the State.

①. 1 Statement 1 is excepted to because the mill property is not charged with the sum paid Mrs Hyam for her right of redemption

2 Because it does not allow said Orr for his services in superintending the the erection of the new mill, \$100. being the sum provided

3 Because the mill property is credited with \$420.24 for toll each year when the proof by admission shows only \$408<sup>00</sup> per year.

4 Because said Mill is not charged with the cost of the Millers house.

5 Because the mill property is not charged with \$150 the value of Orrs services for 10 years in superintending the running of said Mill from Aug 1872 to Sept 1882.

1. 1 Statement 1 is right except that the Mill property should have been charged with the \$200 paid Mrs Hyam instead of charging it with her part of the toll

2. = Statement No 2 is right and we insist on its adoption.

3. = Statement No 3 is excepted to because it only makes Sumner and wife account for and bear the burdens of repairing the mill property upon the principle of life tenancy. This is clearly wrong



Because the property at the time they took their life estate would not yield any tolls, and before they can elect to share in the tolls of the repaired or improved property, that property must repay by way of rents and profits the Common Owner Mr Oro for making said improvements.

2 Because they are double life tenants and the Commissioners does not show which he took whether the oldest or the youngest. This is wrong even if the principle of life tenancy could prevail which clearly it cannot.

3 The Commissioners erred in giving Lumber Credit with the rents of the house, for any year because the Plaintiff in his bill expressly excludes any such charge.

And in any event if rent could be charged it ought to be charged to the mill property as part of the repairing and running expenses, and not charged exclusively to Mr Oro which is the effect here given it.

4. Because he is allowed for repairs and the proof shows the repairs were paid for by stuff from the mill,

5 Because The Commissioners has proceed



moniously to still said account even if he had started right, in this that at several points he has compounded interest.

#### General Exceptions

The defendant claims that under their deed only income entitled to  $\frac{1}{4}$  of the net tolls of the mill that was on the property at the time or date of their deed and all expenditures by J W Orr by way of making said mill property yield tolls are repairs or such improvements as must be paid for out of the tolls before they can seek to participate in the receipts of the tolls arising from the improved property. and the commissioners report and each statement with it which is contrary to that view is excepted to.

2. The commissioners should not give Mr Orr Credit for his accounts of offsets the Defts having tendered that issue must abide by it. See notes accounts &c filed by Orr and in the commissioners possession. See also W A Orr's deposition & other evidence.



The debt says the statute of limitations cannot be made availing by Exceptions to the Commissioners report. Pliffs cannot raise an issue and then when it turns against them avail themselves of the benefits of the Statute, by way of exception. They should have pleaded it at the start if they wished to avail themselves of it.

- 2 The Statute does not apply because in this case the making of Orr to build the mill, <sup>by Lumas</sup> his reception of profits tolls or rents, his renting the mill and every act of the kind is a recognition of the debt.

Statement H. O. is repeated because wrong in every way and especially because the amount found due to Mr Orr from the mill property is a lien on said property and should follow it into the hands of Lumas vendee and therefore said sum due, from the property to Orr should be repaid to him before anything is set aside for distribution



The affidavit of Limer & wife  
age is 4 parts and ~~in~~ ~~the~~ ~~same~~ ~~file~~  
Aug 28<sup>th</sup> 1884

Richmond & Dumas



J W Orr  
in 4 editions  
add 3 to same  
Report  
C L Hamblin



The plff Hamblin in its Cross  
will except to the Commissioner's  
report (Lyatts) for the following  
reasons-

Statement "M P" is excepted to as is all  
other statements that charge the Dexter Mill  
because said Mill is not now in  
controversy and can not be passed upon  
by this Comr. not being in the  
scope of the decree of submission.

2

Because only  $\frac{1}{2}$  interest is charged on  
the tolls,  $\frac{1}{2}$  interest should be charged for  
the first year and then full interest if  
not that year expended. Where ex-  
pended in the year received the mode  
is admitted to be practically correct.

3 Because no interest should be charged on  
tax tickets, when they are accounted for by  
the tolls of the same year, or because Turner  
& wife can only be held liable for  $\frac{1}{4}$   
thereof.

4 Because Turner & wife are not al-  
lowed reasonable rent for the use of  
their exclusive House & Lot-

5 Because the Store House is charge as a  
granery when for use of the ~~mill~~ ~~and~~ ~~granery~~ ~~concerned~~



- 6 Because On is allowed Compensation for his personal services, no such matter can be enquired into by the terms of the decree. Nor is such a charge proper in the cause. If so it barred by limitation as the benefit of it claimed.

- 
1. Statement "R. &" is excepted to because, the work done on the race was permanent and Turner & wife should be charge only pro rata, on their life estate. The court takes large sums for permanent improvements on the race and treats them as repairs & averages them for ten years. The bill of particulars shows them to have been done in one year, or less. Therefore must have been improvements.
- 2 Because man should not be allowed full credit for Taxes; only  $\frac{1}{4}$ , or less.
- 3 Because On is allowed \$120 for services, and no date given if for the 10 years is barred by limitation which is asked on for all over five years.



Statement "H O"

- 1 Is excepted to because the matters charged among others & the like are not necessary repairs nor is platform scales there having been none for the 10 years past, nor was such necessary, Besides the property being in litigation the occupant had not the right to increase his charges to unreasonable lengths for fanciful articles.
- 2 Because he was not entitled to services for superintending repairs that is what the Miller is paid for.
- 2 It is not conceded that the credit for Store House rent is a proper item in this Mill business it is included and should not be here brought in as as the plff claims no charge should be made against the mill for the erection of said Store House called also a granary. No rents can be consistently claimed — But if the charge for building it is proper the claim for rent is proper.



Special Statements No 1 & 2 are  
excepted to, because erroneous in  
allowing improper charges for  
servicing and because the results ar-  
rived at are erroneous.

2 Item "To amount paid for Porter Mill  
April 1869 \$300.

Int thereon to Aug 15-1873 78. 70  
embraced in Special Statement No  
3 of said report is excepted to.

4 Each & every item allowed in said report  
and accompanying statements except for  
the erected & repairs of the new mill are  
excepted to, because based by the Statute  
of Limitations, which exception is in-  
tended to relate to charges for personal  
service, repairs to race construction of  
Porter Mill, and pay for graining &c.  
because the same are barred by limitations  
being more than five years standing -  
and the statute is relied on as a bar thereto  
Aug 27 1884

C. S. Hamilton  
excepted to  
J. W. Hamilton

Morgan & Laidman  
The accounts of defendant Orr as affixes  
are excepted to by the plff as being barred by  
limitations and as not affecting him being a purchaser  
or for value without notice, and the deed upon  
its face giving no such notice.  
Morgan & Laidman



Mr W<sup>m</sup> Luther Phoebe Turner & Charles L. Ham

You will please take notice that at the law office  
of Richard Duncan & Orr in the Town of Jonesville  
on the 16<sup>th</sup> day of November 1882, I will proceed to take  
the deposition of ~~Franklin~~ ~~Head~~ & others to be read

as evidence in my behalf in a certain suit in  
Chancery now pending in the Circuit Court of  
Lee County Virginia in which I am Plaintiff  
and you are defendants. Should said depo-  
sitions not be completed on that day, the taking  
thereof will be continued from day to day from  
time to time and from place to place until  
they are finished. You can attend and  
cross examine if you desire to do so.

Nov 15<sup>th</sup> 1882.

Yours &c,

C. L. Duncan for Counsel



1.50  
 4.00  
 5.00  
 6.00  
 7.00  
 1.00  
 4.80

Writ 2.00 \$1.00  
 3.00 82  
 2.00 80  
 .50  
 7.50 2.60

45.55-  
 37.15)  
 82.70

James W. Orr  
 vs 3/3 Tower.  
 Wm L Turner et al

Executed Nov. 16, 1872  
 by leaving copy to each  
 + the depts.  
 Charles Milloughly, J.S.  
 Louisville, Ky.



The Commonwealth of Virginia,

To the Sheriff of Lee County . . . Greeting:

We Command you to Summon

*William S.*

*Chas. H. Hays Esq. County Clerk to*  
*W. B. Fleerick* et al.  
*William Eliot & H. Cook*

*a Court*  
To appear before the Judge of our Circuit Court of Lee, at the Court-House, on the *10<sup>th</sup>* day of

*February* Term next, to testify and the truth to speak in behalf of *Mr. L. Turner & al*  
in certain matters of controversy pending in our said Court between

*James W. Cur* PAINTIFF and *said Turner & others*

DEFENDANT; and this ~~shall in no wise omit~~ under penalty of

Twenty Dollars. And have then there this writ. Witness JOHN A. G. HYATT Clerk of our said court  
at the Court-House this *7<sup>th</sup>* day of *February* 188*3*; in the *107* year of the Commonwealth

*J. A. G. Hyatt* CLERK.



Mr. J. J. [unclear]  
at [unclear] [unclear]

S. H. [unclear]

Feb 10. [unclear] 1883

Executive of [unclear]  
A. L. Williams, C. B. [unclear]  
C. F. [unclear] Feb 10. 1883  
Chas. Willoughby, J. S.

---



# The Commonwealth of Virginia,

To the Sheriff of Lee County - - - Greeting :

We Command you to Summon

*Wm. L. Turner, J. Mabel E. Turner  
his wife and Charles E. Henshlow*

To appear at the Clerk's office of the Circuit Court of Lee, at the Court-House, on the first Monday in  
*October* next, being rule day to answer a bill in Chancery, exhibited in our said Court against *Turner*

by

*James W. Orr*

And have then there this writ. Witness JOHN A. G. HYATT Clerk of our said court at the Court-House  
this *22<sup>nd</sup>* day of *September* 188*2*, in the *107* year of the Commonwealth.

*J. A. G. Hyatt* CLERK.



1860

James K. Brown  
of the  
Spartanburg  
County, South Carolina

to the Court, 1860

presented by him  
your office copy  
to the Court of  
the State of South Carolina  
in the  
County of Spartanburg  
to the  
J. K. Brown  
for the State of South Carolina



# THE COMMONWEALTH OF VIRGINIA.

To The Sheriff Of Lee County Greeting :

We Command You to Summon

*J. M. Orr*

To appear at the Clerk's Office of the Circuit Court of Lee County, at the Courthouse on the first Monday in

*October*

*Crass*

next being rule day to answer a bill in chancery exhibited in our said Court against

*him*

by

*C. L. Hamblen*

And have then there this writ. Witness J. A. G. HYATT Clerk of our said Court at the Courthouse

This

*1<sup>st</sup>*

day of

*October*

1883

, in the 108

year of the Commonwealth.

*J. A. G. Hyatt* Clerk



(St. J. M. 73)

C. L. Hamblet  
no 3 Spain Chey

J. W. Orr

---

October Rules 1883

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not executed the  
parties answer  
at ~~St. J.~~ St. J. M. 73  
J. A. G. Hyatt  
also







James H. Orr  
J. H. Orr  
J. H. Orr

Executed by sum.  
morning, James Edward,  
H. G. H. C. P. Miles  
John P. Myer, Charles  
Hambler, E. Stewart,  
H. C. Bonham, Jas.  
J. Brown, Wm.  
J. Cronell, W. A. Smith  
Wm. L. Barn, L. P. H.  
W. P. Miles, John Miles  
John R. R. R. R.  
John Hall, W. C. R. R.  
John Good, John P.  
Myer second time.  
T. W. Filmer, & C.  
Total 19420 = \$3.86



The Commonwealth of Va.

To the Sheriff of Lee County, Greeting.  
We command you to summon E. S. Madson

to appear <sup>before you</sup> at the law office of Richmond Demcan  
& Orr in Jonesville Va. on the 8th day of Feb.  
1883, to testify and the truth to speak in behalf  
of James W. Orr in certain matters of contro-  
versy now pending in the Circuit Court of  
Lee County Va. in which said Orr is plaintiff  
and Wm L. Lumer et als are defendants.  
And this they shall not omit under the  
penalty of twenty dollars, and have them  
there this writ.

H. B. Joslyn J. P.



James W Orr  
 vsz Spd  
 Wm L Lumer et als  
File 8th 1883.

Excluded upon  
 2nd hearing  
 to 1st of June

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1898	1898
1899	1899
1900	1900



Virginia, Lee County, to wit.

To H. L. Bonham Constable of Lee County.  
We command you to summon Silsby Wynn  
to appear before me at the law office of Rich-  
mond, Duncan & Orr in Jonesville Va. on the  
28th day of Nov' 1882. to testify by deposition  
in the Chancery Cause of James W. Orr against  
Wm. L. Lurmer & also presiding in the Circuit Court  
of said County, & then & there have this writ  
Given under my hand Nov 25th 1882.

H. J. Morgan, Court  
in Chancery



James H Orr.  
Wm S. Spier  
Jas D. V.  
Jas L. Sumner

---

Nov 25th 1882.

---

Exhibited 27th Nov 1882  
at the Bazaar C. 34



# The Commonwealth of Virginia:

To the Sheriff of Lee County, Greeting:

We Command You to Summon,

*James B. Martin, John H. Blakemore,  
J. M. Eley, Robert Vandeventer,  
Wm. L. Turner et al.*

To appear before the Judge of our County Court of Lee County, at the Courthouse on the

*15<sup>th</sup>* day of *February*

Term next to testify and the truth to speak in behalf of

in certain matters of controversy pending in our said Court between

*James M. Oan*

PLAINTIFF, and *Said*

*Turner et al*

DEFENDANTS And this

*They* shall in no wise omit under the penalty of Twenty

Dollars. And have then there this writ. Witness, JOHN R. GIBSON, Clerk of our said Court, at the Courthouse, the

*12<sup>th</sup>* day of *February*

1883, in the 10<sup>th</sup> year of the Commonwealth.

*J. H. Gibson*  
CLERK



Wm. L. ...  
aid<sup>3</sup> Spec for ent<sup>3</sup>

James W. Orr

Lo 15<sup>th</sup> Feby 1843.

Executed  
Thos. J. Ely D. S.  
for Thos. J. Ely D. S.



# THE COMMONWEALTH OF VIRGINIA.

To The Sheriff Of Lee County Greeting :

We Command You

to summon, Newton Hygal  
+ John Wynn + Jas. Burnett, Wm. S. Martin, Aches P. Wynn  
John Wynn Jr. + Linn Wynn, Jas. Turner (old) and  
+ William Woodward.

To appear before the <sup>a Court</sup> Judge of our Circuit Court of Lee County, at the Courthouse on the

17<sup>th</sup>

day of

July

~~There~~ next to testify and the truth to speak in behalf of

C. L. Hamblen in his Cross Bill

in certain matters of controversy pending in our said Court between

said C. L. Hamblen

in his Cross Bill

PLAINTIFF and

James W. Orr

DEFENDANT. And this

they

shall in no wise omit under the

penalty of Twenty Dollars. And have then there this writ. Witness J. A. G. HYATT Clerk of our said Court at the Courthouse

This

16<sup>th</sup>

day of

July

1884, in the 10<sup>9</sup>

year of the Commonwealth.

J. A. G. Hyatt

Clerk.



C. L. Hambleton

20  $\frac{2}{3}$  Spa for witnesses

Jas W. Orr

To 17<sup>th</sup> July 1885

Executed by  
summoning

Newton Mygall

John Wynn James B.

Burnett, W. L. Martin

A. D. Wynn, John

Wynn Jr. Linn

Wynn & Wm Woodward

J. W. Flunar C. L. C.

8 x 20 = \$1.40



The Commonwealth of Virginia.

To the Sheriff of Lee County, Greeting.

We command you to summon Alexander  
Clifton, Andrew Pennington, Noah Clifton,  
M. D. Richmond Anderson (Will. Wright),  
E. B. Bales, Henry Banngardner, Andrew  
Milbourne + H. C. Bonham

to appear before the undersigned at the law  
office of Richmond, Duncan & Orr in Jones-  
ville Va. on the 17th day of Feb. 1883, to testify  
and the truth to speak in behalf of James  
W Orr in a certain matter of controversy pending  
in the circuit court of Lee county Va. in which  
said Orr is plaintiff and Wm L Lurmer & others  
are defendants. Given under my hand  
Feb 13th 1883.

Henry C. Foslyn J. P.



James W Orr  
vs  
3  
3  
Shad  
Wm L Turner et als

Feb 17th 1883.

Executed by Summoning

Mo. L. Richmond

Andrew Milbourn &

H. C. Bonham,

This Febr 17<sup>th</sup> 1883,

T. J. G. ly D. S. L. Co.